

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on October 4, 2001 by the
Date prior to or same as filing date.

Land Use Board of Appeals

661

Agency and Division

Administrative Rules Chapter Number

William F. Wilson

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Rules Coordinator

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Address

to become effective January 1, 2002 Rulemaking Notice was published in the August 2001 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION
List each rule number separately, 000-000-0000.

FILED

OCT 15 2001

**ARCHIVES DIVISION
SECRETARY OF STATE**

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND:

OAR 661-001-0000; OAR 661-010-0000, -0005, -0010, -0015, -0021, -0025, -0030, -0035, -0038, -0039, -0040, -0045, -0050, -0067, -0068, -0075.

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 183.545 and ORS 197.820(4).

Stat. Auth.: ORS

Other Authority

ORS 34.102, 197.015, 197.620, 197.805, 197.830, 197.835, and 197.845.

Stats. Implemented: ORS

RULE SUMMARY

See attached Rule Summary

Authorized Signer

Anne Corcoran Briggs

Date

Anne Corcoran Briggs

10-11-01

Printed name

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

LUBA 1-2001

RULE SUMMARY

The following summarizes the major substantive amendments:

OAR 661-001-0000 is being amended to conform to the timing provisions of proposed rulemaking with recent statutory changes and to update the mailing list of parties entitled to notice.

OAR 661-010-0000 is being amended to reflect the new effective dates of the rules.

OAR 661-010-0010 is being amended to define "final decision." The proposed amendment will restore the definition of "final decision" in effect prior to amendments adopted in 1998. The rule is being amended to include a definition of "lead intervenor" similar to that of "lead petitioner" for situations involving multiple intervenors unrepresented by an attorney.

OAR 661-010-0015 is being amended to specify that a notice of intent to appeal must be served on both the applicant and the applicant's attorney, if the applicant was represented by an attorney at the local level. The rule is being amended to clarify the procedure for situations involving a notice of intent to appeal that is not accompanied by the proper filing fee or deposit for costs.

OAR 661-010-0021 is being amended to clarify that when a decision is made on reconsideration, only a copy of that decision, rather than the original, must be filed with LUBA. The rule is being amended to conform to the service requirements of the amendment to 661-010-0015.

OAR 661-010-0025 is being amended to specify that a copy of the local record, rather than the original, must be filed with LUBA.

OAR 661-010-0030 is being amended to delete the requirement that typewritten briefs be formatted in Courier font and that all, multiple, unrepresented petitioners sign the petition for review.

OAR 661-010-0035 is being amended to reflect addition of lead intervenors.

OAR 661-010-0039 is being amended to restrict reply briefs to five pages or less unless permission is obtained from the board.

OAR 661-010-0050 is being amended to provided for a "lead intervenor" when two or more intervenors are unrepresented by an attorney. The rule is being amended to require the name, address, and telephone number of each intervenor to be listed.

OAR 661-010-0067 is being amended to clarify that a written agreement to extend the deadline for filing objections to the record does not automatically extend the deadline for filing the petition for review. The proposed amendment also clarifies that written consent may include facsimile signatures, but that the documents themselves may not be filed with LUBA by facsimile.

OAR 661-010-0068 is being amended to conform the rule with the language of ORS 197.845

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OAR 661-010-0075 is being amended to clarify that documents may not be filed by facsimile. The rule is being amended to specify the procedure for serving multiple intervenors. The rule is being amended to encourage the use of recycled paper. The rule is being amended to allow the correction of technical violations in the Notice of Intent to Appeal. The rule is being amended to specify the duties of lead intervenors. The rule is being amended to describe the procedure for appeals transferred to LUBA from Circuit Court.

1 LAND USE BOARD OF APPEALS
2 OAR Chapter 661

3
4 **DIVISION 001**
5 **NOTICE RULE FOR THE LAND USE BOARD OF APPEALS**

6
7 **661-001-0000**

8 **Notice of Proposed Rulemaking**

9 Prior to adoption, amendment or repeal of any rule, the Land Use Board of Appeals
10 shall give notice of the intended action:

11 (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days
12 prior to the effective date.

13 (2) By mailing a copy of notice to persons on the Land Use Board of Appeals'
14 mailing list established pursuant to ORS 183.335(7) at least 28 days prior to the effective
15 date.

16 (3) By mailing or furnishing a copy of the notice to:

17 (a) Associated Press;

18 (b) Association of Oregon Counties;

19 (c) League of Oregon Cities;

20 (d) Associated Oregon Industries;

21 (e) Home Builders Association of Metropolitan Portland;

22 (f) Oregon Building Industries Association;

23 (g) 1000 Friends of Oregon;

24 (h) Oregonians In Action;

25 (i) Oregon Association of Realtors; and

26 (j) Oregon State Bar, Real Estate and Land Use Section.

27 Stat. Auth.: ORS 183

28 Stats. Implemented:

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LAND USE BOARD OF APPEALS
OAR Chapter 661

DIVISION 010
RULES OF PROCEDURE FOR APPEALS

661-010-0000

Introduction

Scope of Rules and Effective Date: All proceedings commenced by a notice of intent to appeal filed after December 31, 2001, shall be governed by these rules. Any proceedings commenced by a notice of intent to appeal filed on or before December 31, 2001, shall be governed by OAR 661-010-0005 through 661-010-0075 as effective March 1, 1998.

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

Stat. Implemented: ORS 197.805.

661-010-0005

Purpose

These rules are intended to promote the speediest practicable review of land use decisions and limited 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 or limited land use decision. Failure to comply with the time limit for filing a notice of intent to appeal under OAR 661-010-0015(1) or a petition for review under OAR 661-010-0030(1) is not a technical violation.

Stat. Auth.: ORS 183.545 and ORS 197.820.

Stat. Implemented: ORS 197.805.

661-010-0010

Definitions

In these rules, unless the context or subject matter requires otherwise:

- (1) "Applicant" means the person who requested that the governing body take an action which resulted in a land use decision or limited land use decision.
- (2) "Board" means the Land Use Board of Appeals or any member thereof.
- (3) "Final decision": A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance.
- (4) "Final decision maker" means the governing body, or a person, commission or other entity authorized by the governing body, that makes the final decision.
- (5) "Governing body" means a city, county or special district governing body, or a state agency.
- (6) "Land use decision" has the meaning given the term in ORS 197.015.
- (7) "Lead Intervenor" means the intervenor designated as the contact person for the purpose of receiving documents from the Board and other parties, when two or more intervenors join in a single motion to intervene and are unrepresented by an attorney. See OAR 661-010-0075(7)(b).
- (8) "Lead Petitioner" means the petitioner designated as the contact person for the purpose of receiving documents from the Board and other parties, when two or more petitioners are unrepresented by an attorney. See OAR 661-010-0075(7)(a).
- (9) "Limited land use decision" has the meaning given the term in ORS 197.015:

1 (10) "Notice" means the notice of intent to appeal and refers to the document that must be
2 filed with the Board in order to begin a review proceeding.

3 (11) "Party" means the petitioner, the governing body, and any person who intervenes as
4 provided in OAR 661-010-0050. "Party" does not include a state agency that files a brief
5 under ORS 197.830(8) or an amicus participating under OAR 661-010-0052.
6 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

7 Stat. Implemented: ORS 197.015(2), (10) and (12); 197.805.

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9 **661-010-0015**

10 **Notice of Intent to Appeal**

11 (1) Filing of Notice:

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

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

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

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

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

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

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

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

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

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

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

50 (A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's
51 name, address and telephone number shall be included. If an attorney represents the
52 petitioner, the attorney's name, address and telephone number shall be substituted for that
53 of the petitioner. If two or more petitioners are unrepresented by an attorney, one

1 petitioner shall be designated as the lead petitioner, but the Notice shall include the
2 names, addresses, and telephone numbers of all such unrepresented petitioners. See
3 OAR 661-010-0075(7)(a);
4 (B) The governing body and the governing body's legal counsel;
5 (C) The applicant, if any (and if other than the petitioner). If an applicant was represented
6 by an attorney before the governing body, then the name, address and telephone number
7 of the applicant's attorney shall also be included;
8 (D) Any other person to whom written notice of the land use decision or limited land use
9 decision was mailed as shown on the governing body's records. The telephone number
10 may be omitted for any such person.
11 (g) A statement advising all persons, other than the governing body, that in order to
12 participate in the review proceeding a person must file a motion to intervene pursuant to
13 OAR 661-010-0050.
14 (h) On the last page, a signature by each petitioner, or the attorney representing that
15 petitioner, on whose behalf the Notice is filed.
16 (i) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.
17 (4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of
18 \$175 and a deposit for costs in the amount of \$150 payable to the Land Use Board of
19 Appeals. One check, State of Oregon purchase order or money order for \$325 may be
20 submitted. If a check providing the filing fee or deposit for costs or both is returned for
21 insufficient funds and the filing fee and deposit for costs are not paid within the time set
22 by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.
23 Stat. Auth.: ORS 183.545 and ORS 197.820(4).
24 Stat. Implemented: ORS 197.620; 197.830(1) and (9).

1 **661-010-0021**

2 **Withdrawal of Decision for Reconsideration**

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

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

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

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

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

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

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

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

35 (b) Refiling of the original notice of intent to appeal or filing of an amended notice of
36 intent to appeal is accomplished by delivery of the Notice to the Board, or receipt of the
37 Notice by the Board, on or before the due date.

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

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

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

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

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

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

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

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

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

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11 **661-010-0025**

12 **Record**

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

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

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

19 (c) Minutes and tape recordings of the meetings conducted by the final decision maker as
20 required by law, or incorporated into the record by the final decision maker. A verbatim
21 transcript of audiotape or videotape recordings shall not be required, but if a transcript
22 has been prepared by the governing body, it shall be included. If a verbatim transcript is
23 included in the record, the tape recordings from which that transcript was prepared need
24 not be included in the record, unless the accuracy of the transcript is challenged.

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

30 (2) Transmittal of Record: The governing body shall, within 21 days after service of the
31 Notice on the governing body, transmit to the Board a certified copy of the record of the
32 proceeding under review. The governing body may, however, retain any large maps,
33 tapes, or difficult-to-duplicate documents and items until the date of oral argument.
34 Transmittal of the record is accomplished by delivery of the record to the Board, or by
35 receipt of the record by the Board, on or before the due date.

36 (3) Service of Record: Contemporaneously with transmittal, the governing body shall
37 serve a copy of the record, exclusive of large maps, tapes, and difficult-to-duplicate
38 documents and items, on the petitioner or the lead petitioner, if one is designated. The
39 governing body shall also serve a copy of the record on any other party, including
40 intervenors-petitioner, requesting a copy provided such other party reimburses the
41 governing body for the reasonable expense incurred in copying the record. The governing
42 body shall also serve a copy of any tape included in the record, or any tape from which a
43 transcript included in the record was prepared, on any party requesting such a copy,
44 provided such party reimburses the governing body for the reasonable expense incurred
45 in copying the tape.

46 (4) Specifications of Record:

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

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

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

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

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

7 (E) Be arranged in inverse chronological order, with the most recent item first. Upon
8 motion of the governing body, the Board may allow the record to be organized
9 differently.

10 (b) Where the record includes the record of a prior appeal to this Board, the table of
11 contents shall specify the LUBA number of the prior appeal, and indicate that the record
12 of the prior appeal is incorporated into the record of the current appeal.

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

15 “(5) If no record objection is filed and the governing body transmits an amendment to
16 the record, the date the amendment is received by the Board shall be considered the date
17 the record is received for the purpose of computing time limits as required by these rules.
18 Stat Auth. ORS 183.545 and ORS 197.820(4).

19 Stat Implemented: ORS 197.830(10)(a) and (14); 197.835.

20 21 **661-010-0030**

22 **Petition for Review**

23 (1) Filing and Service of Petition: The petition for review together with four copies shall
24 be filed with the Board within 21 days after the date the record is received or settled by
25 the Board. See OAR 661-010-0025(2) and 661-010-0026(6). The petition shall also be
26 served on the governing body and any party who has filed a motion to intervene. Failure
27 to file a petition for review within the time required by this section, and any extensions of
28 that time under OAR 661-010-0045(9) or OAR 661-010-0067(2), shall result in dismissal
29 of the appeal and forfeiture of the filing fee and deposit for costs to the governing body.
30 See OAR 661-010-0075(1)(c).

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

32 (a) Begin with a table of contents;

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

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

42 (d) Be typewritten in pica type not exceeding 10 characters per inch, or word-processed in
43 proportionately spaced type no smaller than 12 point for text and 10 point for footnotes;

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

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

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

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

- 1 (i) Be signed on the last page by the author. In cases where multiple unrepresented
2 petitioners or intervenors-petitioner file a single petition for review, the petition for
3 review shall be signed by all petitioners or intervenors-petitioner who wish to join the
4 petition for review.
- 5 (3) If the Board determines that the petition for review fails to conform with the
6 requirements of section (2) of this rule, it shall notify the author, and a brief conforming
7 with the requirements of section (2) shall be filed within three (3) days of notification by
8 the Board. The Board may refuse to consider a brief that does not substantially conform
9 to the requirements of this rule.
- 10 (4) Contents of Petition: The petition for review shall:
 - 11 (a) State the facts that establish petitioner's standing;
 - 12 (b) Present a clear and concise statement of the case, in the following order, with separate
13 section headings:
 - 14 (A) The nature of the land use decision or limited land use decision and the relief sought
15 by petitioner;
 - 16 (B) A summary of the arguments appearing under the assignments of error in the body of
17 the petition;
 - 18 (C) A summary of the material facts. The summary shall be in narrative form with
19 citations to the pages of the record where the facts alleged can be found.
 - 20 (c) State why the challenged decision is a land use decision or a limited land use decision
21 subject to the Board's jurisdiction;
 - 22 (d) Set forth each assignment of error under a separate heading. Where several
23 assignments of error present essentially the same legal questions, the argument in support
24 of those assignments of error shall be combined;
 - 25 (e) Contain a copy of the challenged decision, including any adopted findings of fact and
26 conclusions of law;
 - 27 (f) Contain a copy of any comprehensive plan provision, ordinance or other provision of
28 local law cited in the petition, unless the provision is quoted verbatim in the petition.
- 29 (5) The petition for review may include appendices containing verbatim transcripts of
30 relevant portions of tapes that are part of the record.
- 31 (6) Amended Petition: A petition for review which fails to comply with section (4) of this
32 rule may, with permission of the Board, be amended. The Board shall determine whether
33 to allow an amended petition for review to be filed in accordance with OAR 661-010-
34 0005.
- 35 (7) Cross Petition: Any respondent or intervenor-respondent who desires to file a petition
36 for review may do so by filing a cross petition for review. The cover page shall identify
37 the petition as a cross petition and the party filing the cross petition. The cross petition
38 shall be filed within the time required for filing the petition for review and must comply
39 in all respects with the requirements of this rule governing the petition for review, except
40 that a notice of intent to appeal need not have been filed by such party.
- 41 Stat Auth.: ORS 183.545 and ORS 197.820(4).
- 42 Stat Implemented: ORS 197.830(11), (12) and (13)(a).

1 **661-010-0035**

2 **Respondent's Brief**

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

8 (2) Specifications of Brief: Respondent's brief shall conform to the specifications of the
9 petition for review at OAR 661-010-0030(2), except that the brief shall have red front and
10 back covers. If there is more than one respondent, the front cover page shall specify
11 which respondent is filing the brief. Respondent's brief shall be subject to OAR 661-010-
12 0030(3).

13 (3) Contents of Brief:

14 (a) The respondent's brief shall follow the form prescribed for the petition for review, but
15 need not contain the final decision. The respondent shall specifically accept the
16 petitioner's statement of the case or shall cite any alleged omissions or inaccuracies
17 therein, and may state additional relevant facts or other matters. The statement shall be in
18 narrative form with citations to the pages of the record where the facts alleged can be
19 found.

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

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

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

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

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

30
31 **661-010-0038**

32 **State Agency Briefs**

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

36
37 "Implements: ORS 197.830(8).
38

39 **661-010-0039**

40 **Reply Brief**

41 A reply brief may not be filed unless permission is obtained from the Board. A request to
42 file a reply brief shall be filed with the proposed reply brief together with four copies as
43 soon as possible after respondent's brief is filed. A reply brief shall be confined solely to
44 new matters raised in the respondent's brief. A reply brief shall not exceed five pages,
45 exclusive of appendices, unless permission for a longer reply brief is given by the Board.

46 A reply brief shall have gray front and back covers.

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

48 Stat. Implemented: ORS 197.830(13)(a).
49

50 **661-010-0040**

51 **Oral Argument**

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

1 (2) If a party waives the right to present oral argument, the Board shall consider the case
2 based on that party's brief and the briefs and oral arguments presented by other parties.
3 The parties may, with consent of the Board, stipulate to submit a case to the Board on
4 briefs without oral argument. If a party fails to appear at the time set for oral argument,
5 the Board may deem the cause submitted without oral argument as to that party. A party's
6 failure to so appear shall not preclude oral argument by other parties.

7 (3) The Board shall inform the parties of the time and place of oral argument. A party
8 shall seek the consent of other parties before requesting a change in the scheduled time or
9 date for oral argument. Unless the Board otherwise orders, petitioner(s) shall be allowed
10 30 minutes for oral argument, which may be divided between the initial presentation and
11 rebuttal. Multiple petitioners shall share the thirty minutes for argument. The
12 respondent(s) shall be allowed 30 minutes to respond. Multiple respondents shall share
13 the 30 minutes. The Board shall tape record all arguments, but any party may also arrange
14 at its own expense to record the argument in some other manner.

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

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

20 (6) The Board may conduct oral argument by telephone conference call.
21 Stat. Auth.: ORS 183.545 and ORS 197.820(4).
22 Stat. Implemented: ORS 197.830(13)(a).

23
24 **661-010-0045**

25 **Taking Evidence Not in the Record**

26 (1) Grounds for Motion to Take Evidence Not in the Record: The Board may, upon
27 written motion, take evidence not in the record in the case of disputed factual allegations
28 in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte
29 contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or
30 227.178, or other procedural irregularities not shown in the record and which, if proved,
31 would warrant reversal or remand of the decision. The Board may also upon motion or at
32 its direction take evidence to resolve disputes regarding the content of the record, requests
33 for stays, attorney fees, or actual damages under ORS 197.845.

34 (2) Motions to Take Evidence:

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

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

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

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

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

50 (d) Subpoenas: the Board shall issue subpoenas to any party upon a showing that the
51 witness or documents to be subpoenaed will provide evidence relevant and material to the
52 grounds for the motion. Subpoenas may also be issued under the signature of the attorney
53 of record of a party. Witnesses appearing pursuant to subpoena, other than parties or

1 employees of the Board, shall be tendered fees and mileage as prescribed by ORS
2 44.415(2) for witnesses in civil actions. The party requesting the subpoena shall be
3 responsible for service of the subpoena and tendering the witness and mileage fees to the
4 witness.

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

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

13 (5) Conduct of Hearing:

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

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

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

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

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

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

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

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

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

27 (6) Evidentiary Rules:

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

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

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

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

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

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

48 (a) Simplification of the issues;

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

51 (c) Limitation of the number of witnesses;

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

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

1 **661-010-0067**

2 **Extensions of Time**

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

5 (2) Except as provided in this section and OAR 661-010-0045(9), in no event shall the
6 time limit for the filing of the petition for review be extended without the written consent
7 of all parties. Written consent may include facsimile signatures. The Board may, on a
8 motion of a party or its own motion, extend the deadline for filing the petition for review
9 to allow time to rule on a motion to dismiss. Written consent to extend the deadline for
10 filing record objections shall not automatically extend the deadline for filing the petition
11 for review.

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

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

17 (5) Any agreement by the parties allowing an extension of time shall automatically
18 extend the time for subsequent filings, as well as the issuance of the Board's final order
19 by an amount of time equal to the extension agreed to by the parties.

20 (6) In the event the Board extends the deadline for issuance of its final order without
21 consent of the parties, it shall enter the findings required by ORS 197.840.
22 Stat. Auth.: ORS 183.545 and ORS 197.820(4).
23 Stat. Implemented: ORS 197.830(13)(a).
24

25 **661-010-0068**

26 **Stays**

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

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

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

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

34 (d) A suggested expedited briefing schedule;

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

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

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

45 (4) An order granting a stay of a quasi-judicial land use decision or limited land use
46 decision involving a specific development of land shall be conditional upon filing an
47 undertaking in the principal amount of \$5,000. In all other cases an undertaking, if
48 ordered by the Board, shall be in the amount set forth in the order granting the stay. All
49 undertakings shall be substantially in the form as set forth in Exhibit 4, and shall be
50 accompanied by proof that the surety is qualified by law to issue surety insurance as
51 defined in ORS 731.186. Any objections to the form of undertaking or the surety shall be
52 filed within 14 days after the date of service of a copy of the undertaking on the objecting
53 party.

1 (5) The Board shall base its decision on the stay, including the right to a stay, amount of
2 undertaking, or conditions of any stay order, upon evidence presented. Evidence may be
3 attached to the motion in the form of affidavits, documents or other materials, or
4 presented by means of a motion to take evidence outside the record. See OAR 661-010-
5 0045.

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

7 Stat. Implemented: ORS 197.845.

8
9 **661-010-0075**

10 **Miscellaneous Provisions**

11 (1) Cost Bill and Attorney Fees

12 (a) Time for Filing: The prevailing party may file a cost bill or a motion for attorney fees,
13 or both, no later than 14 days after the final order is issued. The prevailing party shall
14 serve a copy of any such cost bill or motion for attorney fees on all parties.

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

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

19 (B) If the governing body is the prevailing party, the governing body may be awarded
20 copying costs for the required number of copies of the record, at 20 cents per page,
21 whether or not the governing body actively participated in the review.

22 (C) Costs awarded to the governing body pursuant to this section shall be paid from the
23 deposit required by OAR 661-010-0015(4) and shall not exceed the amount of that
24 deposit.

25 (c) Forfeit of Filing Fee and Deposit: If a record has been filed and a petition for review is
26 not filed within the time required by these rules, and the governing body files a cost bill
27 pursuant to this section requesting forfeiture of the filing fee and deposit, the filing fee
28 and deposit required by OAR 661-010-0015(4) shall be awarded to the governing body as
29 cost of preparation of the record. See OAR 661-010-0030(1).

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

32 (e) Attorney Fees:

33 (A) Attorney fees shall be awarded by the Board to the prevailing party as specified in
34 ORS 197.830(15)(b); a motion for attorney fees shall include a signed and detailed
35 statement of the amount of attorney fees sought.

36 (B) Attorney fees shall be awarded to the applicant, against the governing body, if the
37 Board reverses a land use decision or limited land use decision and orders a local
38 government to approve a development application pursuant to ORS 197.835(10).

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

45 (f) Responses and Objections: Any response to a motion for attorney fees, together with
46 any objections to the detailed statement of the amount of attorney fees sought, shall be
47 filed with the Board within 14 days after the date of service of the motion. Objections to
48 the cost bill shall be filed with the Board within 14 days after the date of service of the
49 cost bill.

50 (g) If a cost bill, a motion for attorney fees, or both are filed, and the Board's decision is
51 appealed to the Court of Appeals, the Board shall act on the cost bill or motion for
52 attorney fees after an appellate judgment is issued and any further Board proceedings
53 necessitated by that judgment are concluded.

1 (2) Filing and Service:

2 (a) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to
3 appeal, and as provided in OAR 661-010-0021(5)(b) with regard to a refiled original
4 notice of intent to appeal or an amended notice of intent to appeal, filing a document with
5 the Board is accomplished by:

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

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

9 (C) Documents may not be filed by facsimile. Documents that are filed by delivery or
10 mailing may include facsimile signatures.

11 (b) Service:

12 (A) Any document filed with the Board, other than the record as provided in OAR 661-
13 010-0025(3), or the record after withdrawal for reconsideration as provided in
14 OAR 661-010-0021(6), must also be served on all parties contemporaneously. Service on
15 two or more petitioners unrepresented by an attorney is accomplished by serving the lead
16 petitioner designated under OAR 661-010-0015(3)(f)(A). Service on two or more
17 intervenors unrepresented by an attorney is accomplished by serving the lead intervenor
18 designated under OAR 661-010-0050(2).

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

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

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

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

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

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

39 (a) 20 cents per page for copies of any Board transcript or document of public record that
40 is more than fifty pages.

41 (b) \$10 for a copy of a cassette tape in the record.

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

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

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

48 (6) Appearances Before the Board: An individual shall either appear on his or her own
49 behalf or be represented by an attorney. A corporation or other organization shall be
50 represented by an attorney. In no event may a party be represented by someone other than
51 an active member of the Oregon State Bar. In the event someone other than an active
52 member of the Oregon State Bar files a notice of intent to appeal on behalf of a
53 corporation, other organization, or another individual, the individual filing the notice of

1 intent to appeal will be given an opportunity to provide an amended notice of intent to
2 appeal that conforms with this section. If an amended notice of intent to appeal is not
3 filed within the time set by the Board, the Board will dismiss the appeal.

4 (7) Lead Petitioner or Intervenor:

5 (a) A lead petitioner is responsible for notifying the other petitioners of documents
6 received from the Board and other parties, but each petitioner remains responsible for his
7 or her own representation.

8 (b) A lead intervenor is responsible for notifying the other intervenors of documents
9 received from the Board and other parties, but each intervenor remains responsible for his
10 or her own representation. A lead intervenor's responsibilities under this subsection
11 extend only to intervenors who joined in the lead intervenor's motion to intervene and
12 does not extend to intervenors who filed separate motions to intervene.

13 (8) Computation of Time: Time deadlines in these rules shall be computed by excluding
14 the first day and including the last day. If the last day is Saturday, Sunday or other state
15 legal holiday, the act must be performed on the next working day.

16 (9) Address and Hours of the Board: The Board's address is Public Utility Commission
17 Building, 550 Capitol Street NE, Suite 235, Salem, Oregon, 97301-2552. The telephone
18 number is (503) 373-1265. The offices of the Board shall be open from 8:00 a.m. to 12:00
19 p.m., and 1:00 p.m. to 5:00 p.m. Monday through Friday.

20 (10) Citations to Board Decisions: Citations to Board decisions shall be in the following
21 form:

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

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

25 (11) Motion to Transfer to Circuit Court:

26 (a) Any party may request, pursuant to ORS 34.102, that an appeal be transferred to the
27 circuit court of the county in which the appealed decision was made, in the event the
28 Board determines the appealed decision is not reviewable as a land use decision or
29 limited land use decision as defined in ORS 197.015(10) or (12).

30 (b) A request for a transfer pursuant to ORS 34.102 shall be initiated by filing a motion to
31 transfer to circuit court not later than ten days after the date a respondent's brief or
32 motion that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional
33 issue on its own motion, a motion to transfer to circuit court shall be filed not later than
34 ten days after the date the moving party learns the Board has raised a jurisdictional issue.

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

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

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

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

48 (13) All briefs and motions filed with the Board shall comply with the rules in OAR 661-
49 010-0030(2) with respect to type size, spacing, paper size and printing, numbering and
50 margins.

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

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

1 EXHIBIT 1
2 (661-010-0015)

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 NOTICE OF INTENT TO APPEAL

16 I.

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

23 II.

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

26 or

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

30 III.

31 Respondent, Willamette County, has as its mailing address
32 and telephone number: [INDICATE MAILING ADDRESS AND TELEPHONE

1 NUMBER] and has, as its legal counsel: [INDICATE NAME,
2 ADDRESS AND TELEPHONE NUMBER OF ATTORNEY].

3 IV.

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

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

14 NOTICE:

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

19

20

21 _____
22 Petitioner (each petitioner must
sign)

23

or

24

25

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 III and IV of this Notice pursuant to OAR 661-010-0015(2) by (a) first class mail or (b) personal delivery. [INDICATE WHICH]

Dated:

Signature

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EXHIBIT 2

(661-010-0025)

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- 11. Minutes of City Council hearing on Fred Meyer appeal, held June 1, 1986 43

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

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

1 EXHIBIT 3
2 (OAR 661-010-0050)

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)
18 Petitioner or (b) Respondent [INDICATE WHICH] in the above-
19 captioned appeal. Mr. Davis' (or his attorney's) address and
20 phone number are as follows: [INDICATE ADDRESS AND PHONE
21 NUMBER].

22 II.

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

26 III. [OPTIONAL]

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

29 _____
30 Date John Davis
31 or
32 _____
33 Denise Neil, Attorney for John Davis

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

1 EXHIBIT 4
2 (661-010-0068)

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 UNDERTAKING ON STAY

16 I.

17 Whereas, Jane Smith, the petitioner above named, has
18 applied to the Land Use Board of Appeals for an order staying
19 execution of that land use decision or limited land use
20 decision described as [DESCRIBE LAND USE DECISION OR LIMITED
21 LAND USE DECISION]; and

22 II.

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

28 III.

29 Now, therefore, we [INDICATE PETITIONER'S NAME(S)], the
30 above-named petitioner, as principal, and [INDICATE SURETY
31 NAME], a [INDICATE STATE OF INCORPORATION] corporation
32 qualified by law to issue surety insurance as defined in

1 ORS 731.186, as surety, hereby undertake that petitioner will
2 pay all reasonable attorney's fees and actual damages which
3 may be awarded by the Land Use Board of Appeals in the event
4 the land use decision or limited land use decision above
5 described shall be affirmed, but not to exceed the sum of
6 \$_____.

7 IV.

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

12 Dated this _____ day of _____, 19____.

13
14
15
16
17
18 _____
Principal

19
20
21
22 By: _____
23 Surety

24
25 [Add Certificates of Filing and Service on separate page. See
26 forms in Exhibits 5 and 6.]

1 EXHIBIT 5
2 (661-010-0075)

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 Public Utility Commission Building, 550 Capitol Street NE,
12 Suite 235, Salem, OR, 97301-2552, by (a) first class mail or
13 (b) personal delivery [INDICATE WHICH].
14
15
16
17

18 Dated: _____
19
20

21 _____
22 Signature
23
24

1 EXHIBIT 6
2 (661-010-0075)

3
4 CERTIFICATE OF SERVICE

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

7
8 I hereby certify that on [INDICATE DATE], I served a true
9 and correct copy of this [IDENTIFY DOCUMENT] by (a) first
10 class mail or (b) personal delivery [INDICATE WHICH] on the
11 following persons: [LIST NAME AND ADDRESS OF EACH PARTY OR
12 THE PARTY'S ATTORNEY].
13
14
15

16 Dated: _____
17
18
19
20
21

22 _____
Signature