

6-30

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 June 30, 2010 by the
Oregon Land Use Board of Appeals
Date prior to or same as filing date
661

Agency and Division
Administrative Rules Chapter Number
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Rules Coordinator Address Telephone

to become effective July 1, 2010. Rulemaking Notice was published in the May 2010 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Amends LUBA's administrative rules regarding filing, service, reply briefs, costs, intervention, and transfer from DLCD.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.
ADOPT:

AMEND:

- OAR 661-001-0000
- OAR 661-010-0000
- OAR 661-010-0015
- OAR 661-010-0021
- OAR 661-010-0025
- OAR 661-010-0026
- OAR 661-010-0030
- OAR 661-010-0035
- OAR 661-010-0039
- OAR 661-010-0040
- OAR 661-010-0045
- OAR 661-010-0050
- OAR 661-010-0052
- OAR 661-010-0055
- OAR 661-010-0065
- OAR 661-010-0067
- OAR 661-010-0075

REPEAL:

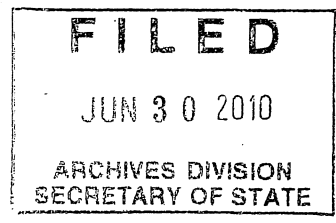
RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 183.335

Other Auth.:

Stats. Implemented: ORS ORS 183.335, 183.715



RULE SUMMARY

The following summarizes the major substantive amendments:

LUBA 1-2010

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

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

OAR 661-010-0015 is being amended to specify what will be considered as proof of mailing to comply with LUBA's deadlines. Clarify the procedures that LUBA will take when it receives a Notice of Intent to Appeal without the required filing fee. The deposit for costs sh also be raised from \$150 to \$200.

OAR 661-010-0021 is being amended to clarify that filing or refiling of a Notice of Intent to Appeal may accomplished via U.S. mail on before the due date. Also, the rule is being amended to clarify that an intervenor need not file a new motion to intervene when the petitioner files an amended notice of intent to appeal or if the petitioner refiles the original notice of intent to appeal.

OAR 661-010-0025 is being amended to increase the type of media that LUBA will accept as the local record. The requirements for t table of contents of a record are also being amended to require that any attached exhibits be listed separately at the end of the table contents. Amendment allows parties to accept electronic versions of the record. Amendment also provides LUBA will have discretion accept a record with minor defects.

OAR 661-010-0026 is being amended to require a governing body's legal council to file a response or advise LUBA of the parties' effo to resolve a record objection within 14 days of the filing of a record objection.

OAR 661-010-0030 is being amended to only allow cross assignments of error if they are presented in a cross petition for revie Amendment also requires that maps be included when helpful in illustrating material facts.

OAR 661-010-0035 is being amended to clarify that cross assignments of error are not allowed in respondent's briefs.

OAR 661-010-0039 is being amended require that a reply brief be filed within seven days of the respondent's brief and to clarify how a party may respond to an amicus brief or a state agency brief.

OAR 661-010-0040 is being amended to limit the time that petitioner may reserve for rebuttal to 10 minutes and limits the use of rebuttal time to address arguments raised by respondent(s).

OAR 661-010-0045 is being amended to provide LUBA with discretion to take evidence when there is a jurisdictional dispute. Rule is also being amended to provide LUBA with the ability to order the time to continue to run while the board addresses a motion to take evidence.

OAR 661-010-0050 is being amended to clarify that intervention in an appeal that is consolidated with other appeals does not allow for intervention in the other appeals. Rule is also being amended to clarify that an intervenor need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refilled.

OAR 661-010-0052 is being amended to clarify when an amicus brief must be filed.

OAR 661-010-0055 is being amended to clarify that consolidation of appeals does not affect the status of the parties to each appeal.

OAR 661-010-0065 is being amended to change the amount of time for filing certain motions from 10 days to 14 days to conform to other time limits.

OAR 661-010-0067 is being amended to provide for an automatic time extension for filing a Petition for Review when the parties agree to an extension regarding a record objection.

OAR 661-010-0075 is being amended to raise the recoverable copying costs from \$0.20 to \$0.25 per page. Rule amendment also clarifies when a document will be deemed received by LUBA. The rule amendment further clarifies that the lead petitioner shall be responsible for notifying the other petitioners of documents and other communications that they receive from the Board. Finally, the rule is being amended to provide how LUBA will process an appeal that is transferred from the Oregon Department of Land Conservation and Development.



Michael A. Holstun

June 30, 2010

Authorized Signer

Printed name

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

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(8) at least 28 days prior to the effective
15 date.

16 (3) By mailing or furnishing a copy of the notice to members of the House of
17 Representatives and the Senate required by ORS 183.335(15).

18 (4) By mailing or furnishing a copy of the notice to:

19 (a) Associated Press;

20 (b) Association of Oregon Counties;

21 (c) League of Oregon Cities;

22 (d) Associated Oregon Industries;

23 (e) Home Builders Association of Metropolitan Portland;

24 (f) Oregon Building Industries Association;

25 (g) 1000 Friends of Oregon;

26 (h) Oregonians In Action;

27 (i) Oregon Association of Realtors;

28 (j) Oregon State Bar, Real Estate and Land Use Section; and

29 (k) Oregon Department of Land Conservation and Development.

30 Stat. Auth.: ORS 183

31 Stats. Implemented:

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 June 30, 2010 shall be governed by these rules. Any proceedings commenced by a notice of intent to appeal filed on or before June 30, 2010 shall be governed by OAR 661-010-0005 through 661-010-0075 as effective January 1, 2002. Stat. Auth.: ORS 183.545 and ORS 197.820(4). Stat. Implemented: ORS 197.805.

661-010-0015

Notice of Intent to Appeal

(1) Filing of Notice:

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

(b) The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, the date of the receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number is the date of filing.

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

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

(2) Service of Notice: The Notice shall be served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection

(3)(f) of this rule on or before the date the notice of intent to appeal is required to be filed.

Service of the Notice as required by this section may be in person or by first class mail.

The date of serving such notice shall be the date of mailing.

Permanent Rule Amendments to
OAR Chap. 661, Div. 010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of
33 \$200 and a deposit for costs in the amount of \$200 payable to the Land Use Board of
34 Appeals. One check, State of Oregon purchase order or money order for \$400 may be
35 submitted. If a check providing the filing fee or deposit for costs or both is returned for
36 insufficient funds and the filing fee and deposit for costs are not paid within the time set
37 by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.

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

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

40
41 **661-010-0021**

42 **Withdrawal of Decision for Reconsideration**

43 (1) If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a
44 decision for the purposes of reconsideration, it shall file a notice of withdrawal with the
45 Board on or before the date the record is due. A copy of the decision on reconsideration

Permanent Rule Amendments to
OAR Chap. 661, Div. 010.

1 shall be filed with the Board within 90 days after the filing of the notice of withdrawal or
2 within such other time as the Board may allow.

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

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

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

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

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

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

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

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

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

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

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

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

Permanent Rule Amendments to
OAR Chap. 661, Div. 010.

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

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

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

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

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

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

18
19 **661-010-0025**

20 **Record**

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

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

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

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

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

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

45 (3) Service of Record:

Permanent Rule Amendments to
OAR Chap. 661, Div. 010.

1 (a) Contemporaneously with transmittal, the governing body shall serve a paper copy of
2 the record, exclusive of large maps, media recordings, and difficult-to-duplicate
3 documents and items, on the petitioner or the lead petitioner, if one is designated. The
4 governing body shall also serve a paper copy of the record on any other party, including
5 intervenors-petitioner, requesting a copy provided such other party reimburses the
6 governing body for the reasonable expense incurred in copying the record. The governing
7 body shall also serve a copy of any media recording included in the record, or any
8 recording from which a transcript included in the record was prepared, on any party
9 requesting such a copy, provided such party reimburses the governing body for the
10 reasonable expense incurred in copying the recording.

11 (b) By prior agreement of the party to be served, service of the record as described in
12 OAR 661-010-0025(3)(a) may be in an electronic format instead of a paper copy. If
13 copies of the record are served on the parties in electronic format only, the local
14 government may not recover copying costs under OAR 661-010-0075(1)(b)(B) for such
15 electronic copies of the record.

16 (4) Specifications of Record:

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

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

24 (B) Begin with a table of contents, listing each item contained therein, and the page of the
25 record where the item begins (see Exhibit 2). Where a listed item includes attached
26 exhibits, the exhibits shall be separately listed. Each large map, media recording, item or
27 document retained by the governing body under section (2) of this rule shall be separately
28 listed at the end of the table of contents;

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

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

32 (E) Be arranged in inverse chronological order, with the most recent item first. Exhibits
33 attached to a record item shall be included according to the numerical or alphabetical
34 order in which they are attached, not the date of the exhibits. Upon motion of the
35 governing body, the Board may allow the record to be organized differently.

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

39 (c) A record that does not substantially conform to the preceding requirements may be
40 rejected by the Board.

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

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

1 **661-010-0026**

2 **Objections to the Record**

3 (1) Before filing an objection to the record, a party shall attempt to resolve the matter
4 with the governing body's legal counsel. The objecting party shall include a statement of
5 compliance with this section at the same time the objection is filed. The Board may deny
6 any objection to the record that does not comply with this rule.

7 (2) An objection to the record or an objection to an amendment or supplement to the
8 record shall be filed with the Board within 14 days of the date appearing on the notice of
9 record transmittal sent to the parties by the Board. A party may file a record objection
10 while continuing to resolve objections with the governing body's legal counsel.

11 Objections may be made on the following grounds:

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

15 (b) The record contains material not included as part of the record during the proceedings
16 before the final decision maker. The item(s) not included as part of the record during the
17 proceedings before the final decision maker shall be specified, as well as the bases for the
18 claim that the item(s) are not part of the record.

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

21 (d) The record does not conform to the requirements of OAR 661-010-0025(4).

22 (3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate
23 shall demonstrate with particularity how the minutes or transcripts are defective and shall
24 explain with particularity why the defect is material. Upon such demonstration regarding
25 contested minutes, the Board shall require the governing body to produce a transcript of
26 the relevant portion of the proceeding, if an audiotape recording or other type of recording
27 is available. Upon such demonstration regarding contested transcripts, the Board shall
28 require the governing body to produce a more complete or amended transcript.

29 (4) A party may, within 14 days from the date of service of a record objection, file a
30 response. The governing body's legal counsel shall, within 14 days of the filing of a
31 record objection, either file a response to the record objection or advise the Board in
32 writing of the status of the parties' efforts to resolve the record objection.

33 (5) The Board may, at its discretion, conduct a telephone conference with the parties to
34 consider any objections to the record. A party desiring a telephone conference on an
35 objection to the record shall include a request for a telephone conference in its objection
36 to the record or response.

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

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

43 Stats. Implemented: ORS 197.830(10)(a), ORS 197.830(14) & ORS 197.835.

44
45 **661-010-0030**

46 **Petition for Review**

Permanent Rule Amendments to
OAR Chap. 661, Div. 010.

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

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

10 (a) Begin with a table of contents;

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

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

20 (d) Be typewritten or word-processed in proportionately spaced font such as Times New
21 Roman no smaller than 12 point for text and 10 point for footnotes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (6) Amended Petition: A petition for review which fails to comply with section (4) of this
19 rule may, with permission of the Board, be amended. The Board shall determine whether
20 to allow an amended petition for review to be filed in accordance with OAR 661-010-
21 0005.

22 (7) Cross Petition: Any respondent or intervenor-respondent who desires reversal or
23 remand of an aspect of the decision on appeal regardless of the outcome under the
24 petition for review may file a cross petition for review that includes one or more
25 assignments of error. The cross petition for review may also include contingent cross-
26 assignments of error, clearly labeled as such, that the Board will address only if the
27 decision on appeal is reversed or remanded under the petition for review. The cover page
28 shall identify the petition as a cross petition and the party filing the cross petition. The
29 cross petition shall be filed within the time required for filing the petition for review and
30 must comply in all respects with the requirements of this rule governing the petition for
31 review, except that a notice of intent to appeal need not have been filed by such party.

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

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

34
35 **661-010-0035**

36 **Respondent's Brief**

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

42 (2) Specifications of Brief: Respondent's brief shall conform to the specifications of the
43 petition for review at OAR 661-010-0030(2), except that the brief shall have red front and
44 back covers. If there is more than one respondent, the front cover page shall specify
45 which respondent is filing the brief. Respondent's brief shall be subject to OAR 661-010-
46 0030(3).

1 (3) Contents of Brief:

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

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

12 (c) A response brief shall not include an assignment of error or cross-assignment of error.

13 (4) The respondent's brief may include appendices containing verbatim transcripts of
14 media recordings that are part of the record.

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

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

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

19
20 **661-010-0039**

21 **Reply Brief**

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

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

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

31
32 **661-010-0040**

33 **Oral Argument**

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

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

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

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

45 (a) Unless the board otherwise orders, petitioner(s) shall be allowed 30 minutes for oral
46 argument. Petitioner(s) may reserve up to 10 minutes for rebuttal following respondents'

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1 oral argument, to respond to arguments made during respondents' oral argument.

2 Multiple petitioners shall share the 30 minutes.

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

5 (c) The Board shall record all arguments, but any party may also arrange at its own
6 expense to record the argument in some other manner.

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

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

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

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

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

15

16 **661-010-0045**

17 **Taking Evidence Not in the Record**

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

26 (2) Motions to Take Evidence:

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

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

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

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

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

42 (d) Subpoenas: the Board shall issue subpoenas to any party upon a showing that the
43 witness or documents to be subpoenaed will provide evidence relevant and material to the
44 grounds for the motion. Subpoenas may also be issued under the signature of the attorney
45 of record of a party. Witnesses appearing pursuant to subpoena, other than parties or
46 employees of the Board, shall be tendered fees and mileage as prescribed by ORS

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1 44.415(2) for witnesses in civil actions. The party requesting the subpoena shall be
2 responsible for service of the subpoena and tendering the witness and mileage fees to the
3 witness.

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

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

12 (5) Conduct of Hearing:

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

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

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

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

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

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

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

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

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

26 (6) Evidentiary Rules:

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

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

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

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

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

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

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- 1 (a) Simplification of the issues;
2 (b) The possibility of obtaining admissions of fact and documents which will avoid
3 unnecessary proof;
4 (c) Limitation of the number of witnesses;
5 (d) The form and substance of any prehearing order;
6 (e) Such other matters as may aid in the disposition of the appeal.
7 (8) Proposed Prehearing Order: The Board, with or without a prehearing conference, may
8 require that the parties prepare and sign a proposed prehearing order to be filed with the
9 Board on or before a date specified by the Board. The order shall contain:
10 (a) A statement of contentions of law of each party;
11 (b) A concise statement of all contentions of fact to be proved by each party;
12 (c) A statement of all agreed facts;
13 (d) A list of witnesses and a summary of their testimony;
14 (e) A list of exhibits and a statement of the contents of each;
15 (f) Such other matters as the Board may require in order to expedite the hearing and
16 appeal.
17 (9) Effect on Time Limits: Unless the Board orders otherwise, the filing of a motion to
18 take evidence shall suspend the time limits for all other events in the review proceeding,
19 including the issuance of the Board's final order. If the Board grants the motion, the time
20 limits for other events shall remain suspended until the Board issues its findings. Unless
21 the parties agree otherwise, the Board shall schedule any evidentiary hearing not less than
22 ten days after the order granting the motion to take evidence is issued. If the Board denies
23 a motion to take evidence, the time for all other events will begin to run on the date the
24 Board issues its order denying the motion, or on such other date as is specified in that
25 order.
26 Stat. Auth. ORS 183.545 and ORS 197.820(4).
27 Stat. Implemented: ORS 197.835(2)(b).

28

29 **661-010-0050**

30 **Intervention**

- 31 (1) Standing to Intervene: The applicant and any person who appeared before the local
32 government, special district or state agency may intervene in a review proceeding before
33 the Board. Status as an intervenor is recognized when a motion to intervene is filed, but
34 the Board may deny that status at any time.
35 (2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date
36 the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended
37 notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant
38 to OAR 661-010-0021. When two or more intervenors join in a motion to intervene and
39 are unrepresented by an attorney, a lead intervenor shall be designated as the contact
40 person for the purpose of receiving documents from the Board and other parties. The
41 motion to intervene (see Exhibit 3) shall:
42 (a) List the names, addresses, and telephone numbers of all persons moving to intervene.
43 If an attorney represents the intervenor(s), the attorney's name, address and telephone
44 number shall be substituted for that of the intervenor(s);
45 (b) State whether the party is intervening on the side of the petitioner or the respondent;

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

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

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

6 (3) Filing Fee: A motion to intervene shall be accompanied by a filing fee of \$100
7 payable to the Land Use Board of Appeals. If a motion to intervene is received without
8 payment of the filing fee or a check providing the filing fee is returned for insufficient
9 funds, the intervenor will be given an opportunity to submit the required fee. If the filing
10 fee is not paid within the time set by the Board, the Board shall deny the motion to
11 intervene. Cash shall not be accepted.

12 (4) Intervention in an appeal that is consolidated with other appeals does not allow the
13 intervenor to appear as a party with respect to those appeals in which the intervenor has
14 not filed a timely motion to intervene.

15 (5) Parties who have already intervened in an appeal need not file new motions to
16 intervene when an amended notice of intent to appeal is filed or the original notice of
17 intent to appeal is refiled pursuant to OAR 661-010-0021.

18 (6) Intervenor's Brief:

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

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

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

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

27
28 **661-010-0052**

29 **Amicus Participation**

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

34 (2) Appearance as amicus shall be by brief only, unless the Board specifically authorizes
35 or requests oral argument. An amicus brief shall be subject to the same rules as those
36 governing briefs of parties to the appeal, and shall be filed together with four copies.

37 Where amicus is aligned with the interests of the petitioner(s), the amicus brief is due
38 seven days after the date the petition for review is due. In all other circumstances, the
39 amicus brief is due within the time required for filing respondent's brief. No filing fee is
40 required. An amicus brief shall have green front and back covers.

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

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

43
44 **661-010-0055**

45 **Consolidation**

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

5 Stat. Auth.: ORS 197.820(4)

6 Stats. Implemented: ORS 197.805

7 Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-
8 1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-
9 21-92; LUBA 2-1992, f. & cert. ef. 3-19-92

10
11 **661-010-0065**

12 **Motions**

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

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

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

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

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

32 Stats. Implemented: ORS 197.805

33 Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-
34 1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-
35 22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98

36
37 **661-010-0067**

38 **Extensions of Time**

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

41 (2) Except as provided in this section and OAR 661-010-0045(9), in no event shall the
42 time limit for the filing of the petition for review be extended without the written consent
43 of all parties. Written consent may include facsimile signatures. The Board may, on a
44 motion of a party or its own motion, extend the deadline for filing the petition for review
45 to allow time to rule on a motion to dismiss. Written consent to extend the deadline for
46 filing record objections shall automatically extend the deadline for filing the petition for

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- 1 review for the same number of days granted to extend the deadline for filing record
2 objections, unless the consenting parties expressly provide otherwise.
3 (3) All other time limits may be extended upon written consent of all parties, the Board's
4 motion or motion of a party. Written consent may include facsimile signatures.
5 (4) A motion for extension of time shall state the reasons for granting the extension and
6 must be filed with the Board within the time required for performance of the act for
7 which an extension of time is requested.
8 (5) Any agreement by the parties allowing an extension of time shall automatically extend
9 the time for subsequent filings, as well as the issuance of the Board's final order by an
10 amount of time equal to the extension agreed to by the parties.
11 (6) In the event the Board extends the deadline for issuance of its final order without
12 consent of the parties, it shall enter the findings required by ORS 197.840.
13 Stat. Auth.: ORS 183.545 and ORS 197.820(4).
14 Stat. Implemented: ORS 197.830(13)(a).

15
16 **661-010-0075**

17 **Miscellaneous Provisions**

18 (1) Cost Bill and Attorney Fees

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

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

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

26 (B) If the governing body is the prevailing party, the governing body may be awarded
27 copying costs for the required number of copies of the record, at 25 cents per page,
28 whether or not the governing body actively participated in the review.

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

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

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

39 (e) Attorney Fees:

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

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

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

7 (f) Responses and Objections: Any response to a motion for attorney fees, together with
8 any objections to the detailed statement of the amount of attorney fees sought, shall be
9 filed with the Board within 14 days after the date of service of the motion. Objections to
10 the cost bill shall be filed with the Board within 14 days after the date of service of the
11 cost bill.

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

16 (2) Filing and Service:

17 (a) Filing:

18 (A) Documents may not be filed by facsimile. Documents filed with the Board may
19 include facsimile signatures.

20 (B) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to
21 appeal, filing a document with the Board is accomplished by:

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

23 (ii) Mailing on or before the date due by first class mail with the United States Postal
24 Service. If the date of mailing is relied upon as the date of filing, the date of the first
25 class postmark on the envelope mailed to the Board is the date of filing.

26 (b) Service:

27 (A) Any document filed with the Board, other than the record as provided in OAR 661-
28 010-0025(3), or the record after withdrawal for reconsideration as provided in
29 OAR 661-010-0021(6), must also be served on all parties contemporaneously. Service on
30 two or more petitioners unrepresented by an attorney is accomplished by serving the lead
31 petitioner designated under OAR 661-010-0015(3)(f)(A). Service on two or more
32 intervenors unrepresented by an attorney is accomplished by serving the lead intervenor
33 designated under OAR 661-010-0050(2).

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

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

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

42 (c) Recycled Paper. Parties filing anything with the Board, including but not limited to
43 notices of intent to appeal, records, motions, and briefs, are encouraged to use recycled
44 paper if recycled paper is readily available at a reasonable price in the party's community.
45 Further, parties are encouraged to use paper containing the highest available content of

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1 post-consumer waste, as defined in ORS 279.545, that is recyclable in the office paper
2 recycling program in the party's community.

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

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

9 (a) 25 cents per page for copies of any Board transcript or document of public record.

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

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

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

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

17 (6) Appearances Before the Board: An individual shall either appear on his or her own
18 behalf or be represented by an attorney. A corporation or other organization shall be
19 represented by an attorney. In no event may a party be represented by someone other than
20 an active member of the Oregon State Bar. In the event someone other than an active
21 member of the Oregon State Bar files a notice of intent to appeal on behalf of a
22 corporation, other organization, or another individual, the individual filing the notice of
23 intent to appeal will be given an opportunity to provide an amended notice of intent to
24 appeal that conforms with this section. If an amended notice of intent to appeal is not
25 filed within the time set by the Board, the Board will dismiss the appeal.

26 (7) Lead Petitioner or Intervenor:

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

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

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

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

42 (10) Citations to Board Decisions: Citations to Board decisions shall be in the following
43 form:

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

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

Permanent Rule Amendments to
OAR Chap. 661, Div. 010.

1 (11) Motion to Transfer to Circuit Court:

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

6 (b) A request for a transfer pursuant to ORS 34.102 shall be initiated by filing a motion to
7 transfer to circuit court not later than 14 days after the date a respondent's brief or motion
8 that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional issue
9 on its own motion, a motion to transfer to circuit court shall be filed not later than 14 days
10 after the date the moving party learns the Board has raised a jurisdictional issue.

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

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

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

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

24 (13) Transfer from the Oregon Department of Land Conservation and Development:

25 Where the Director of the Oregon Department of Land Conservation and Development
26 transfers a matter to LUBA pursuant to ORS 197.825(2)(c)(A), the case shall proceed as
27 provided in LUBA's rules, subject to the following:

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

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

37 (c) On receipt of a notice of intent to appeal, the Board shall, by letter, establish a
38 deadline for the respondent to file the portion of the local record necessary to review the
39 transferred matter. In all other respects, an appeal of a transferred matter shall proceed
40 according to LUBA's rules.

41 (14) All briefs and motions filed with the Board shall comply with the rules in OAR 661-
42 010-0030(2) with respect to type size, spacing, paper size and printing, numbering and
43 margins.

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

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