

*Corrected*  
Secretary of State

Certificate and Order for Filing

### TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on Upon filing, by the

Land Use Board of Appeals

661

Agency and Division

Administrative Rules Chapter Number

Kelly Burgess

(503) 373-1265

Rules Coordinator

Telephone

775 Summer St. NE, Suite 330, Salem, OR 97301-1283

Address

To become effective 05/01/2013 through 10/28/2013.

#### RULE CAPTION

Amends rule to reflect agency change of address.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

#### RULEMAKING ACTION

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

**ADOPT:**

**AMEND:**

661-010-0075

**SUSPEND:**

**Statutory Authority:**

ORS 183.545, ORS 197.820(4)

**Other Authority:**

**Statutes Implemented:**

ORS 197.815(1)

*1283 KB 5/6/13*

#### RULE SUMMARY

Effective May 6, 2013, LUBA's offices will be re-located to the Department of State Lands Building, 775 Summer Street NE, Suite 330, Salem Oregon, 97301-~~1279~~. Accordingly, LUBA must amend OAR 661-010-0075(9), which specifies the mailing location of the Board, and Exhibit 5 to LUBA's rules, which is a sample certificate of filing with LUBA's address listed. LUBA anticipates that it will replace the temporary amendments with permanent rule amendments within 180 days of the effective date of the temporary rule.

**FILED**

4-30-13 11:00 AM

ARCHIVES DIVISION  
SECRETARY OF STATE

Kelly Burgess

kelly.burgess@state.or.us

Rules Coordinator Name

Email Address

*LUBA 1-2-2013 (T)*

Secretary of State  
Certificate and Order for Filing  
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<b>FILED</b> 4-30-13 11:00 AM ARCHIVES DIVISION SECRETARY OF STATE
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Kelly Burgess  
Rules Coordinator Name

kelly.burgess@state.or.us  
Email Address

661-010-0075

Secretary of State  
**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form

Land Use Board of Appeals

661

Agency and Division

Administrative Rules Chapter Number

Amends rule to reflect agency change of address.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Agency change of address

**Statutory Authority:**

ORS 183.545, ORS 197.820(4)

**Other Authority:**

**Statutes Implemented:**

ORS 197.815(1)

1283 KB  
5/2/13

**Need for the Temporary Rule(s):**

DAS requires LUBA to move its offices from its current location in the Public Utility Commission Building, 550 Capitol Street NE, Suite 235, Salem, Oregon, 97301-2552, to a different location, to enable building repairs. Effective May 6, 2013, LUBA's offices will be located in the Department of State Lands Building, 775 Summer Street NE, Suite 330, Salem Oregon, 97301-1279. Accordingly, LUBA must amend OAR 661-010-0075(9), which specifies the official mailing address of the Board. LUBA must also amend Exhibit 5 to its rules, a sample certificate of service that lists LUBA's mailing address. LUBA anticipates that it will replace the temporary amendments with permanent rule amendments within 180 days of the effective date of the temporary rule.

Given the timing of the move, there is insufficient time to enact a permanent rule amending the address prior to the move. Adopting the temporary rule is necessary to avoid serious prejudice to the participants in LUBA appeals, as otherwise parties may file appeals and documents at the old address as stated in the rules, but the documents may not reach LUBA at its new address or be delivered late. Deadlines to file some documents at LUBA depend upon when LUBA physically receives the document, so mis-addressed documents may be untimely filed.

**Documents Relied Upon, and where they are available:**

None

**Justification of Temporary Rule(s):**

See above

Kelly Burgess

kelly.burgess@state.or.us

Printed Name

Email Address

**FILED**

4-30-13 11:00 AM

ARCHIVES DIVISION  
SECRETARY OF STATE

Text of Temporary Amendments to OAR 661-010-0075(9), Effective April 26, 2013.

**661-010-0075**

**Miscellaneous Provisions**

(1) Cost Bill and Attorney Fees

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

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

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

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

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

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

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

(e) Attorney Fees:

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

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

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

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

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

(2) Filing and Service:

(a) Filing:

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

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

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

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

(b) Service:

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Lead Petitioner or Intervenor:

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

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

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

(9) Address and Hours of the Board: Until May 5, 2013, the Board's address is Public Utility Commission Building, 550 Capitol Street NE, Suite 235, Salem, Oregon, 97301-2552. Effective May 6, 2013, the Board's address is Department of State Lands Building, 775 Summer Street NE, Suite 330, Salem Oregon, 97301-1283. The Board will accept as correctly addressed pleadings addressed to either location. The telephone number is (503) 373-1265. The offices of the Board shall be open from 8:00 a.m. to 12:00 p.m., and 1:00 p.m. to 5:00 p.m. Monday through Friday.

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

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

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

(11) Motion to Transfer to Circuit Court:

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

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

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

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

(a) No additional filing fee shall be required;

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

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

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

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

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

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

[ED. NOTE: Exhibits referenced are available from the agency.]

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

Stats. Implemented: ORS 34.102, 197.830(9), (13)(a) & (15), 197.835(10) & 197.845(3)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 2-1981(Temp), f. & ef. 8-20-81; LUBA 1-1982(Temp), f. & ef. 5-19-82; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1989, f. & cert. ef. 11-30-89; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 2-1998(Temp), f. & cert. ef. 6-15-98 thru 12-12-98; LUBA 3-1998, f. 12-1-98, cert. ef. 12-13-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

(Exhibit 5)  
(661-010-0075)

Certificate of Filing

I hereby certify that on [DATE], I filed the original of this [NAME OF DOCUMENT], together with [INDICATE NUMBER OF COPIES] copies, with the Land Use Board of Appeals, 775 Summer Street NE, Suite 330, Salem Oregon, 97301-1283 by [CERTIFIED OR FIRST CLASS MAIL OR PERSONAL DELIVERY (indicate which)].

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

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SIGNATURE