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## PERMANENT ADMINISTRATIVE ORDER

**LUBA 1-2018**  
CHAPTER 661  
LAND USE BOARD OF APPEALS

**FILED**  
12/28/2018 11:32 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Amendments change brief word limits, oral argument length, office hours; allow reply briefs.

EFFECTIVE DATE: 01/01/2019

AGENCY APPROVED DATE: 12/28/2018

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### RULES:

661-010-0000, 661-010-0030, 661-010-0039, 661-010-0040, 661-010-0075

AMEND: 661-010-0000

RULE TITLE: Introduction

NOTICE FILED DATE: 11/26/2018

RULE SUMMARY: OAR 661-010-0000: This amendment proposes a change to make clear that all proceedings commenced by a notice of intent to appeal filed after January 1, 2019 shall be governed by the proposed rule amendments (noticed on November 1, 2018), with one exception. The November 1, 2018 rule amendments as proposed at OAR 661-010-0040 (regarding oral argument length), as effective January 1, 2019, shall apply to all proceedings pending on that date, no matter when commenced.

### RULE TEXT:

Scope of Rules and Effective Date: All proceedings commenced by a notice of intent to appeal filed after January 1, 2019 shall be governed by these rules. Proceedings commenced on or before January 1, 2019 shall be governed by OAR 661-010-0005 through 661-010-0075 as effective on the date the notice of intent to appeal was filed, except that OAR 661-010-0040 as effective January 1, 2019 shall apply to all proceedings pending on that date, no matter when commenced.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.805

AMEND: 661-010-0030

RULE TITLE: Petition for Review

NOTICE FILED DATE: 10/29/2018

RULE SUMMARY: Brief Length

OAR 661-010-0030(2)(b): This amendment proposes a change from 14,000 words to 11,000 words. There is no change to the requirement that all briefs must be filed with double-spaced text and in 14-point font.

OAR 661-010-0030(2)(c): This amendment changes the page count for parties who do not have access to a word-processing system that provides a word count, from 50 pages to 38 pages.

OAR 661-010-0030(2)(e)-(f): All briefs must be filed with double-spaced text and may not be smaller than 14-point text; the provision for smaller font for typewritten briefs has been deleted.

OAR 661-010-0030(2)(h): This amendment requires briefs to include page numbers at the top of each page of text.

OAR 661-010-0030(2)(k): The certificate of compliance now explicitly requires parties to provide a word (or page) count.

The amendment also modifies Exhibit 7 (Certificate of Compliance with Brief Length and Type Size Requirements) to be consistent with the proposed amendments to OAR 661-010-0030(2) by removing the certification for typewritten briefs. If a party chooses not to use Exhibit 7, the party must provide a Certificate of Compliance that conforms to the requirements of OAR 661-010-0030(2)(k).

The following explains the Board's decision to reduce the word limit for briefs. First, most briefs filed under the current rule are less than 11,000 words, so the lower word limit will not affect the vast majority of appeals. Second, one desirable consequence to the lower word limit may be more concise and focused briefs. Third, where additional briefing is warranted in more complex appeals, parties still have the option of requesting permission to file a brief that exceeds 11,000 words. While the number of parties requesting extra-length briefs may increase under the proposed rule, that is a relatively minor inconvenience for the Board and parties. The intent behind the rule as amended is to reduce the overall word count but still provide a limit which represents 10 percent more than that allowed for briefs in the Oregon Court of Appeals. ORAP 5.05 (1)(b)(ii). The idea of a word count with a certificate of compliance comes from the Oregon Appellate Courts' filing requirements. ORAP 5.05(1)(d).

#### Exhibit 7

The amended Exhibit 7 removes the allowance of 12-point type. All briefs are to be submitted using 14-point type.

RULE TEXT:

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

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

(a) Begin with a table of contents and authorities;

(b) Not exceed 11,000 words, unless permission for a longer petition is given by the Board. Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, table of contents, table of authorities, appendices, certificate of service, any other certificates, and the signature block do not count toward the word-count limitation.

(c) If a party does not have access to a word-processing system that provides a word count, a brief is acceptable if it does not exceed 38 pages;

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

(e) Briefs must be legible and capable of being read without difficulty. The print must be black. Briefs must be prepared using proportionately spaced type. The style must be in font such as Times New Roman, and may not be smaller than 14 point type both for text and for footnotes;

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

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

(h) Be printed on 8-1/2 by 11 inch paper, with numbers for each line of text and page numbers on the top of each page of text;

(i) Have inside margins of 1-1/4 inches, outside margins of 1 inch, top and bottom margins of 3/4 inch; and

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

(k) A signed certificate of compliance with the above-listed specifications for the petition for review shall be appended after the final page of the petition. See Exhibit 7. The certificate of compliance must include a statement that:

(A) The brief complies with the word-count limitation in paragraph (2)(b) of this subsection for briefs and OAR 661-010-0039 for reply briefs by indicating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. If the attorney, or a self-represented party, does not have access to a word-processing system that provides a word count, the certificate must indicate that the attorney, or self-represented party does not have access to such a system and that the brief complies with paragraph (2)(c) of this subsection for briefs and OAR 661-010-0039 for reply briefs.

(B) The brief complies with the font limitation in paragraph (2)(e) of this subsection by indicating that the size is not smaller than 14 point for both the text of the brief and footnotes.

(3) If the Board determines that the petition for review fails to conform with the requirements of section (2) of this rule, it shall notify the author, and a brief conforming with the requirements of section (2) shall be filed within three (3) days

of notification by the Board. The Board may refuse to consider a brief that does not substantially conform to the requirements of this rule.

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

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

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

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

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

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

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

(d) Set forth each assignment of error under a separate heading. Each assignment of error must demonstrate that the issue raised in the assignment of error was preserved during the proceedings below. Where an assignment raises an issue that is not identified as preserved during the proceedings below, the petition shall state why preservation is not required. Each assignment of error must state the applicable standard of review. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.830(11), (12), (13)(a)

**Exhibit 7**  
(661-010-0030)

Certificate of Compliance with Brief Length and Type Size Requirements

Brief Length

I certify that (1) this brief complies with the word-count limitation in OAR 661-010-0030(2) and (2) the word count of this brief as described in OAR 661-010-0030(2) is \_\_\_\_\_ words.

[or]

I certify that (1) I do not have access to a word-processing system that provides a word count; (2) this brief complies with the page limitation in OAR 661-010-0030(2); and (3) the number of pages in this brief is \_\_\_\_\_ pages.

[or]

The board granted a motion to exceed the length limit for this brief. The order granting that motion was dated \_\_\_\_\_ and permits a brief of up to \_\_\_\_\_. I certify that (1) this brief complies with that order and (2) the word count of this brief (as described in OAR 661-010-0030(2)) is \_\_\_\_\_ words [OR] the number of pages in this brief is \_\_\_\_\_ pages.

Type Size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by OAR 661-010-0030(2).

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

\_\_\_\_\_  
SIGNATURE

AMEND: 661-010-0039

RULE TITLE: Reply Brief

NOTICE FILED DATE: 10/29/2018

RULE SUMMARY: OAR 661-010-0039: Modifies the current rule to allow a reply brief in all instances, provided it is limited to 1,000 words and filed within the time set in our rule (seven days from the date the response brief is filed). If a party does not have access to a word-processing system that provides a word count, a reply brief is limited to four pages. Reply briefs must also file a certificate of compliance which, as amended, now explicitly requires providing a word (or page) count. OAR 661-010-0030(2)(k).

RULE TEXT:

A reply brief shall be permitted. A reply brief shall be filed together with four copies within seven days of the date the respondent's brief is filed. A reply brief shall be confined to responses to arguments in the respondent's brief, state agency brief, or amicus brief, but shall not include new assignments of error or advance new bases for reversal or remand. A reply brief shall not exceed 1,000 words, exclusive of appendices, unless permission for a longer reply brief is given by the Board. If a party does not have access to a word-processing system that provides a word count, a reply brief is acceptable if it does not exceed four pages. A reply brief must include the certificate of compliance required by OAR 661-010-0030(2)(k). A reply brief shall have gray front and back covers.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.830(13)(a)

AMEND: 661-010-0040

RULE TITLE: Oral Argument

NOTICE FILED DATE: 10/29/2018

RULE SUMMARY: Oral Argument Length

OAR 661-010-0040(3)(a)-(b): Modifies the rule, changing the length of allowed oral argument from 60 minutes to 30 minutes, total. Petitioner(s) shall be allowed 15 minutes (instead of 30) for oral argument, and may reserve up to 5 minutes (instead of 10) for rebuttal. Multiple petitioners shall share the 15 minutes. Respondents shall be allowed 15 minutes (instead of 30) to respond. Multiple respondents shall share the 15 minutes.

Motions for an overlength oral argument must be filed at any time after the record is received but in no event later than seven days after the petition for review is filed, in order to be consistent with LUBA's oral argument scheduling procedure.

The intent behind the rule as amended is to reduce the overall time spent on oral argument and thereby create more time for the Board to issue written opinions and orders in a timely manner. Parties may file a motion for an overlength oral argument and state the reasons why a longer oral argument will assist the Board in resolving the appeal.

RULE TEXT:

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

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

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

(a) Unless the Board otherwise orders, petitioner(s) shall be allowed 15 minutes for oral argument. Petitioner(s) may reserve up to 5 minutes for rebuttal following respondents' oral argument, to respond to arguments made during respondents' oral argument. Multiple petitioners shall share the 15 minutes. Requests for an overlength oral argument shall be submitted to the Board in writing at any time after the record is received but in no event later than seven days after the petition for review is filed, shall state whether all parties join in the request, and shall state the reasons why an overlength oral argument will assist the Board in resolving the appeal.

(b) The respondent(s) shall be allowed 15 minutes to respond. Multiple respondents shall share the 15 minutes.

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.830(13)(a)



AMEND: 661-010-0075

RULE TITLE: Miscellaneous Provisions

NOTICE FILED DATE: 10/29/2018

RULE SUMMARY: Office Hours

OAR 661-010-0075(9): LUBA's office hours are presently 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday. Pursuant to this amendment, LUBA's office hours will be 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday.

RULE TEXT:

(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.

(D) If an intervenor under OAR 661-010-0050 or a state agency under OAR 661-010-0038 is the prevailing party, the intervenor or state agency may be awarded the cost of the fee to intervene or to file a state agency brief.

(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 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 or scans 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 or scans 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: The Board's address is 775 Summer Street NE, Suite 330, Salem Oregon, 97301-1283. The telephone number is (503) 373-1265. The Board's office shall be open from 8:30 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:

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

(b) 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 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.]

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)(a), (b)

STATUTES/OTHER IMPLEMENTED: ORS 34.102, 197.830(9), (13)(a) & (15), 197.835(10), 197.845(3)

**(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, OR 97301-1283, by [CERTIFIED OR FIRST CLASS MAIL OR PERSONAL DELIVERY (indicate which)].

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

\_\_\_\_\_  
SIGNATURE

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**(Exhibit 6)**  
(661-010-0075)

Certificate of Service

I hereby certify that I served the foregoing [NAME OF DOCUMENT] for LUBA No. \_\_\_\_\_ on [DATE] by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

NAME  
ADDRESS  
CITY/STATE/ZIP

NAME  
ADDRESS  
CITY/STATE/ZIP

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

\_\_\_\_\_  
SIGNATURE