

**FILED**  
OCT 05 1983  
NORMA PAULUS  
SECRETARY OF STATE

**CERTIFICATE AND ORDER**  
for  
**FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE**

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the \_\_\_\_\_

LAND USE BOARD OF APPEALS

(Agency)

on OCTOBER 5, 1983

(Date)

to become effective \_\_\_\_\_ upon filing \_\_\_\_\_  
(Date)

The within matter having come before the Land Use Board of Appeals \_\_\_\_\_ after  
(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be adopted: Perm.  or Temp.   
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:  
(New Rules)

\_\_\_\_\_  
\_\_\_\_\_

Amended:  
(Existing Rules)

AMENDMENT OF OAR 661-10-000  
\_\_\_\_\_  
\_\_\_\_\_

Suspended:  
(Temporary Only)

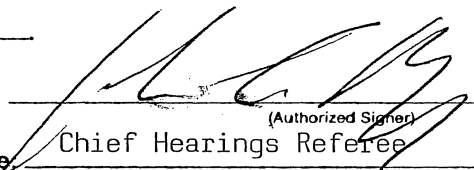
\_\_\_\_\_  
\_\_\_\_\_

Repealed:  
(Existing Rules)

\_\_\_\_\_  
\_\_\_\_\_

as Administrative Rules of the LAND USE BOARD OF APPEALS \_\_\_\_\_  
(Agency)

DATED this 5th day of OCTOBER, 1983

By:   
(Authorized Signer)  
Title: Chief Hearings Referee

Statutory Authority: OREGON LAWS 1983, ch 827

Subject Matter: AMENDMENT OF RULE

Statement of Need Attached:

Fiscal Impact Attached:

For Further Information Contact: JOHN T. BAGG, CHIEF HEARINGS REFEREE Phone: 373-1265

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

In the Matter of an Amendment	)	
to the Rules of Procedure of	)	STATEMENT OF NEED FOR
Land Use Board of Appeals,	)	EMERGENCY AMENDMENT OF
OAR 662-10-000	)	OAR 662-10-000

I. FINDINGS

Board Rules adopted October 3, 1983 govern the procedure for appeals and petitions for review filed with the Board on or after October 3, 1983. The rules also provide that petitions for review filed prior to October 1 will be processed under the Board's old rules of procedure adopted April 29, 1980. Reading the two provisions together and with 1983 Or Laws, ch 827 creates confusion as to what rules, if any, govern appeals filed with the Board prior to the effective date of 1983 Or Laws, ch 827 where the record or the petition for review is not due until sometime after October 1, 1983. In other words, the rules create a gap, not existing in the controlling law, for cases now pending before the Board where the record or petition for review has not yet been filed. An amendment is needed to avoid confusion and potential prejudice to parties appearing before the Board because of uncertainty as to due dates for the filing of the record on review and the petition for review. In some circumstances, confusion as to the due date of a petition for review can result in dismissal of the appeal. The rules must be amended to make it clear that they are applicable, in their entirety, to any proceedings before the Board on or after

the effective date of rule adoption (with the exception of those cases where the petition for review is filed before October 1, 1983, as provided in 1983 Or Laws, ch 827, sec 36(1)).

In addition, the reference to the date of adoption of the Board's old rules of procedure is not correctly stated. This amendment changes the reference to eliminate confusion and to correct a typographical error.

## II. LEGAL AUTHORITY

The Board relies on 1983 Or Laws, ch 827, sec 28(b)(4) and ORS 183.335 as authority to amend a rule of procedure without prior notice or hearing.

## III. NEED FOR AMENDMENT

An amendment is needed to OAR 662-10-000 to avoid confusion and potential prejudice to parties appearing before the Board because of uncertainty as to due dates for the filing of the record on review and the petition for review. In some circumstances, confusion as to the due date of a petition for review can result in dismissal of the appeal.

This amendment to the Board's rules conforms the rules to the provisions of 1983 Or Laws, ch 827 and corrects a typographical error in a reference to the Board's old rules of procedure.

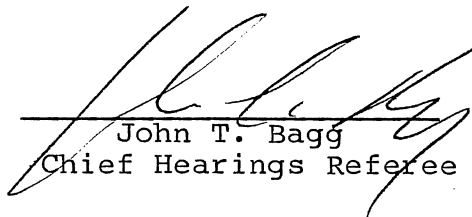
## IV. PRINCIPAL DOCUMENTS RELIED UPON

The Board relies only upon the legal authority cited in II above.

V. FISCAL IMPACT

This amendment will result in no fiscal impact on any person or entity whatsoever.

Dated this 5th day of October, 1983.



John T. Bagg  
Chief Hearings Referee

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

In the Matter of an Amendment    )  
to the Rules of Procedure of       )  
Land Use Board of Appeals,        )  
OAR 661-10-000                    )   EMERGENCY AMENDMENT OF  
  )   OAR 661-10-000

OAR 661-10-000 of the Land Use Board of Appeals is amended as set forth below with the new material underlined and deleted material in brackets:

Introduction

661-10-000 (1) Scope of Rules and Effective Date:  
[These rules govern the procedure for all appeals and petitions for review filed with the Land Use Board of Appeals] on or after October 5, 1983.] All appeals new or pending on or after October 5, 1983 are governed by these rules, except that [P]etitions for review filed prior to October 1, 1983 will be processed under the Board's Rules of Procedure adopted April [15] 29, 1980. These rules also govern procedure for all pending and new appeals from October 1 to October 5, 1983, providing no party is unduly surprised or its interests adversely affected.

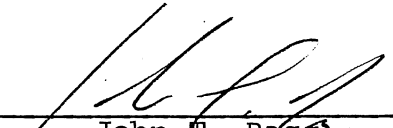
(2) Legal Authority for Rules: 1983 Or Laws, ch 827, sec 28(b)(4), provides the Board shall adopt rules governing the conduct of review proceedings.

(3) Principal Authorities Relied Upon: In adopting these rules, the Board relies upon its existing Rules of Procedure adopted April [15] 29, 1980, and subsequent amendments thereto, the Rules of Appellate Procedure for the Supreme Court and Court of Appeals of the State of Oregon, June 1, 1982, and the Attorney General's Model Rules of Procedure under the Administrative Procedure Act, November 17, 1981.

(4) Fiscal Impact: The rules will have a fiscal impact upon petitioners and makers of land use decisions on appeal before the Board in that (1) the rules require a deposit for costs and further provide for distribution of costs after issuance of the

Board's final order; (2) the rules include a provision for mileage and fees for witnesses; and (3) the rules control the award of attorney fees in certain circumstances.

Dated this 5th day of October, 1983.

  
\_\_\_\_\_  
John F. Bagg  
Chief Hearings Referee