

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

LUBA 2-2023

CHAPTER 661

LAND USE BOARD OF APPEALS

FILED

09/21/2023 1:26 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Updating to conform LUBA's rules to House Bill (HB) 3458 (2023).

EFFECTIVE DATE: 09/25/2023 THROUGH 12/31/2023

AGENCY APPROVED DATE: 09/21/2023

CONTACT: Alyx Peterson
503-373-1265
alyx.peterson@luba.oregon.gov

775 Summer St NE
Ste 330
Salem, OR 97301

Filed By:
Alyx Peterson
Rules Coordinator

NEED FOR THE RULE(S):

The proposed amendments are necessary to conform LUBA's rules to House Bill (HB) 3458 (2023), which allows for a reversal or remand, in part, of a land use decision adopting or changing an acknowledged comprehensive plan or land use regulation under certain circumstances.

JUSTIFICATION OF TEMPORARY FILING:

The effective date of this statutory amendment is September 25, 2023, and there is not enough time to provide the requisite notice for permanent rulemaking. Without these amendments, LUBA will not be compliant with state law. Further, LUBA is undergoing permanent rulemaking to implement these same changes before the end of the year.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

These amendments amend various provisions of OAR chapter 660, division 10, which is available at <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=125>.

These amendments are responsive to HB 3458 (2023), which is available at <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3458/Enrolled>

RULES:

661-010-0000, 661-010-0071

AMEND: 661-010-0000

RULE TITLE: Introduction

RULE SUMMARY: 661-010-0000

Clarifies that all appeals filed on or after September 25, 2023, will be governed by the temporary rules.

RULE TEXT:

Scope of Rules and Effective Date: All proceedings commenced by a notice of intent to appeal filed on or after August 1, 2022 shall be governed by these rules. Proceedings commenced before August 1, 2022, shall be governed by OAR 661-010-0005 through OAR 661-010-0075 as effective on the date the notice of intent to appeal was filed, except that all proceedings commenced on or after September 25, 2023, shall be governed by the current temporary version of OAR 661-010-0075(3) regarding Reversal or Remand of Land Use Decisions, effective September 25, 2023 to December 31, 2023.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.805

AMEND: 661-010-0071

RULE TITLE: Reversal or Remand of Land Use Decisions

RULE SUMMARY: Allows for a reversal or remand of a land use decision, in part, consistent with the amendments to ORS 197.835 in HB 3458.

RULE TEXT:

(1) The Board shall reverse a land use decision when:

- (a) The governing body exceeded its jurisdiction;
- (b) The decision is unconstitutional; or
- (c) The decision violates a provision of applicable law and is prohibited as a matter of law.

(2) The Board shall remand a land use decision for further proceedings when:

- (a) The findings are insufficient to support the decision, except as provided in ORS 197.835(11)(b);
- (b) The decision is not supported by substantial evidence in the whole record;
- (c) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);
- (d) The decision improperly construes the applicable law, but is not prohibited as a matter of law; or
- (e) All parties stipulate in writing to remand.

(3) The Board may reverse or remand a land use decision in part when:

- (a) The decision adopts a change to an acknowledged comprehensive plan or land use regulation;
- (b) The decision contains a severability clause; and
- (c) The affirmed parts, standing alone, are complete and capable of being executed with the local government's legislative intent.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4), 197.835(1)

STATUTES/OTHER IMPLEMENTED: ORS 197.835