

## SAMPLE PETITION FOR REVIEW

**Disclaimer:** This sample brief is for your information only. The Land Use Board of Appeals (“LUBA” or “the Board”) does not offer this brief for, or otherwise endorse, the substance of the example arguments. This brief is presented only as a sample brief that acceptably complies with the form and format requirements of the Oregon Administrative Rules. See OAR 661-010-0000 through OAR 661-010-0075, current as of May 1, 2024, available online at [Oregon Secretary of State Administrative Rules](#). **Please make sure that your brief complies with OAR 661-010-0030**, current as of May 1, 2024, which specifically lays out the requirements for filing a petition for review with LUBA.

### **A Note on Citing Rules, Statutes, and Cases:**

Rules should be cited in the following form: OAR 123-45-6789.

Statutes should be cited in the following form: ORS 123.456.

Oregon Court of Appeals opinions should be cited in the following form:  
John Doe v. XYZ County, 123 Or App 345, 567 P3d 789 (2020).

Oregon Supreme Court opinions should be cited in the following form:  
John Doe v. XYZ County, 123 Or 345, 567 P3d 789 (2020).

In accordance with OAR 661-010-0075(8), citations to LUBA 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, Feb 15, 1981).

Most cases are reported and should be cited properly whenever possible. LUBA’s website includes citations to reported cases. Specific citations to page numbers, where appropriate, should also be included. If you do not have access to an online legal database to find the correct citations and page numbers, the Oregon law school libraries and libraries at county courthouses are often open during certain hours of the day to the general public.

**The petition for review must contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law. See OAR 661-010-0030(4)(e).**

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

[NAME],

*Petitioner,*

and

[NAME],

*Intervenor-Petitioner,*

vs.

[NAME],

*Respondent,*

and

[NAME],

*Intenvenor-Respondent.*

LUBA No. \_\_\_\_\_

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**PETITION FOR REVIEW**

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[Name], OSB # \_\_\_\_\_ (if applicable)

[Address]

[Phone Number]

[Email]

*Attorney for Petitioner (or  
Petitioner, if unrepresented)*

[Name], OSB # \_\_\_\_\_

[Address]

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*Attorney for Respondent*

[Name], OSB # \_\_\_\_\_

[Address]

[Phone Number]

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*Attorney for Intervenor-Petitioner*

[Name], OSB # \_\_\_\_\_

[Address]

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*Attorney for Intervenor-Respondent*

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## I. PETITIONER'S STANDING

[State the facts that establish Petitioner's standing to appeal the challenged decision. See ORS 197.830(2) which provides the requirements for standing.]

EXAMPLE: Petitioner timely filed a notice of intent to appeal under ORS 197.830(1). ORS 197.830(2)(a). Additionally, Petitioner appeared orally or in writing before the decision-making body during the proceedings. ORS 197.830(2)(b).

## II. STATEMENT OF THE CASE

### A. NATURE OF THE LAND USE DECISION AND RELIEF SOUGHT

[Describe the challenged land use decision or limited land use decision. What was applied for? What action did the local government take?]

EXAMPLE: Petitioner appeals Respondent's land use decision approving an application for a conditional use permit.

[Describe how Petitioner requests that LUBA resolve the appeal. LUBA will review the decision and prepare a final order *affirming*, *reversing*, or *remanding* the decision. See ORS 197.835(1)(a).]

EXAMPLE: Petitioner seeks reversal or, in the alternative, remand of Respondent's decision.

1 **B. SUMMARY OF MATERIAL FACTS**

2 [State the facts in the record that are necessary for LUBA’s review of the  
3 challenged decision. The facts might include but are not limited to a description of  
4 the subject property, the parties, the application(s) approved or denied by the local  
5 government, and the local government proceedings. The summary should be in  
6 narrative form with citations to the pages of the record where the facts alleged can  
7 be found.]

8 **C. SUMMARY OF ARGUMENTS**

9 [Provide a brief summary of the arguments included within the assignments  
10 of error in the body of the petition below. Each assignment of error should provide  
11 one or more grounds on which LUBA might provide the requested relief. See ORS  
12 197.835.]

13 EXAMPLE: Respondent’s decision is not supported by substantial evidence  
14 on the whole record because. . . Further, Respondent’s decision misconstrues the  
15 applicable law because. . . Finally, in reaching its decision, Respondent failed to  
16 follow the applicable procedures in a manner that prejudiced Petitioner’s  
17 substantial rights because . . .

### 1 III. LUBA’S JURISDICTION

2 [State why the challenged decision is a land use decision or limited land use  
3 decision subject to the Board’s jurisdiction. See ORS 197.015(10)(a) defining  
4 “land use decision” and ORS 197.015(12)(a) defining “limited land use decision.”]

5 EXAMPLE: Respondent’s final decision applies County Code provisions to  
6 the subject property. Accordingly, Respondent’s decision is a land use decision as  
7 that term is defined under ORS 197.015(10)(a)(A). LUBA has jurisdiction to  
8 review the challenged decision under ORS 197.825(1).

### 9 IV. FIRST ASSIGNMENT OF ERROR

10 [Optional subheading for First Assignment of Error. **EXAMPLE: “The**  
11 **decision is not supported by substantial evidence in the whole record**  
12 **because...”]**

#### 13 A. PRESERVATION OF ERROR

14 [Demonstrate how the issue raised in the First Assignment of Error was  
15 preserved in the proceedings below, including citations to the record. If the issue is  
16 not identified as preserved during the proceedings below, state why preservation is  
17 not required.]

#### 18 B. STANDARD OF REVIEW

19 [State the applicable standard of review.]

20 EXAMPLE: The Board shall reverse or remand a land use decision under  
21 review if the Board finds the local government or special district “made a decision  
22 not supported by substantial evidence in the whole record.” ORS 197.835(9)(a)(C).

1 Substantial evidence is . . . *Fictitious Farm v. Legendary Local Gov't*, 22 Or LUBA  
2 564, 568 (1999).

### 3 C. ARGUMENT

4 [State the legal argument(s) supporting the First Assignment of Error.

5 Include citations to code provisions, rules, statutes, and cases, where applicable.

6 Include citations to the record, where applicable.]

7 EXAMPLE: Respondent made a decision not supported by substantial  
8 evidence in the whole record when it approved the application because... Recently,  
9 in *Nonexistent Neighbor v. Mythical Municipality*, the local government based its  
10 decision on... \_\_\_ Or LUBA \_\_\_ (LUBA No 50-456, May 23, 2023) (slip op at  
11 28). . Likewise, here, Respondent based its decision on... Rec. 782. In *Nonexistent*  
12 *Neighbor*, LUBA found that the local government made a decision not supported  
13 by substantial evidence because... *Id.* at 582. The same outcome is necessary here  
14 where... Rec. 2102-2110. Accordingly, the Respondent made a decision not based  
15 on substantial evidence in the whole record by...

## 16 V. SECOND ASSIGNMENT OF ERROR

17 [Optional subheading for Second Assignment of Error. EXAMPLE: “The  
18 decision misconstrues the applicable law because...”]  
19

### 20 A. PRESERVATION OF ERROR

21 [Demonstrate how the issue raised in the Second Assignment of Error was

22 preserved in the proceedings below, including citations to the record. If the Second



1 Assignment of Error raises an issue that is not identified as preserved during the  
2 proceedings below, state why preservation is not required.]

3 **B. STANDARD OF REVIEW**

4 [State the applicable standard of review.]

5 EXAMPLE: The Board shall reverse or remand a land use decision under  
6 review if the Board finds the local government or special district “improperly  
7 construed the applicable law.” ORS 197.835(9)(a)(D).” The Board shall affirm a  
8 local government’s interpretation of its land use regulations, unless the Board  
9 determines the local government’s interpretation “is contrary to a state statute, land  
10 use goal or rule that the \* \* \* land use regulation implements.” ORS 197.829(1)(d).

11 **C. ARGUMENT**

12 [State the legal argument(s) supporting the Second Assignment of Error.  
13 Include citations to code provisions, rules, statutes, and cases where applicable.  
14 Include citations to the record where applicable.]

15 EXAMPLE: Respondent misconstrued the applicable law in approving the  
16 application for a conditional use permit because... County Code (“CC”) CC  
17 12.34.567 implements Goal 21. In *Bogus Business v. Sham Special District*, the  
18 Oregon Supreme Court held that Goal 21 requires... 425 Or 673, 680-82, 234 P2d  
19 122 (1984). When applying CC 12.34.567 to the application, Respondent decided  
20 that... Rec. 1562. This interpretation is inconsistent with the Supreme Court’s

1 ruling in *Bogus Business* and the requirements of Goal 21, which CC 12.34.567 is  
2 meant to implement. Accordingly, Respondent misconstrued the applicable law  
3 by...

#### 4 **VI. THIRD ASSIGNMENT OF ERROR**

5 **[Optional subheading for Third Assignment of Error. EXAMPLE:**  
6 **“Respondent failed to follow the applicable procedures in a manner that**  
7 **prejudiced Petitioner’s substantial rights because...”]**

##### 8 **A. PRESERVATION OF ERROR**

9 [Demonstrate how the issue raised in the Third Assignment of Error was  
10 preserved in the proceedings below, including citations to the record. If the Third  
11 Assignment of Error raises an issue that is not identified as preserved during the  
12 proceedings below, state why preservation is not required.]

##### 13 **B. STANDARD OF REVIEW**

14 [State the applicable standard of review.]

15 EXAMPLE: The Board shall reverse or remand a land use decision under  
16 review if the Board finds that the local government or special district failed to  
17 follow the procedures applicable to the matter before it in a manner that prejudiced  
18 the substantial rights of the petitioner. ORS 197.835(9)(a)(B).

##### 19 **C. ARGUMENT**

20 [State the legal argument(s) supporting the Third Assignment of Error.  
21 Include citations to code provisions, rules, statutes, and cases where applicable.  
22 Include citations to the record where applicable.]



**CERTIFICATE OF COMPLIANCE  
WITH BRIEF LENGTH, TYPE SIZE, AND COPY OF DECISION  
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 county; (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 \_\_\_\_\_ words [OR] pages. 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 of 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).

**Copy of Decision**

I certify that the petition for review contains a copy of the challenged decision, including any adopted findings of fact and conclusions of law as required by OAR 661-010-0030(4)(e).

DATED this [#] day of [month], [year].

*Sign Here*

\_\_\_\_\_  
[Name], OSB # \_\_\_\_\_ (if applicable)  
Attorney for Petitioner (or  
Petitioner, if unrepresented)

## CERTIFICATE OF FILING

I hereby certify that on [date], I filed the original of this **PETITION FOR REVIEW** in LUBA No. \_\_\_\_\_, together with one copy, with the Land Use Board of Appeals, 775 Summer Street, NE, Suite 330, Salem, Oregon 97301-1283, pursuant to OAR 661-010-0075(2)(a)(B), by [method of filing. EXAMPLE: certified mail, return receipt requested].

DATED this [#] day of [month], [year].

*Sign Here*

\_\_\_\_\_  
[Name], OSB # \_\_\_\_\_ (if applicable)  
Attorney for Petitioner (or  
Petitioner, if unrepresented)

**CERTIFICATE OF SERVICE**

I hereby certify that on [date], I served a true and correct copy of this  
**PETITION FOR REVIEW** in LUBA No. \_\_\_\_\_, by [method of service.

EXAMPLE: first-class mail], on the following:

[Name]  
[Address]  
*Attorney for Intervenor-Petitioner*

[Name]  
[Address]  
*Attorney for Respondent*

[Name]  
[Address]  
*Attorney for Intervenor-Respondent*

DATED this [#] day of [month], [year].

*Sign Here*

\_\_\_\_\_  
[Name], OSB # \_\_\_\_\_ (if applicable)  
Attorney for Petitioner (or  
Petitioner, if unrepresented)