

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

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PERMANENT ADMINISTRATIVE ORDER

LUBA 2-2024

CHAPTER 661

LAND USE BOARD OF APPEALS

FILED

10/25/2024 1:16 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Updates agency address, concerns electronic signatures, eliminates copies for most filings, concerns other procedural requirements.

EFFECTIVE DATE: 11/01/2024

AGENCY APPROVED DATE: 10/25/2024

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RULES:

661-010-0000, 661-010-0012, 661-010-0015, 661-010-0021, 661-010-0025, 661-010-0030, 661-010-0035, 661-010-0038, 661-010-0039, 661-010-0040, 661-010-0046, 661-010-0050, 661-010-0052, 661-010-0065, 661-010-0075

AMEND: 661-010-0000

RULE TITLE: Introduction

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Reflects the effective date of this rulemaking, reflects that all appeals will be governed by the new agency address.

RULE TEXT:

Scope of Rules and Effective Date: All proceedings commenced by a notice of intent to appeal filed on or after November 1, 2024, shall be governed by these rules. Proceedings commenced before November 1, 2024, 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 pending on or after November 1, 2024, shall be governed by the current version of OAR 661-010-0075(7) regarding the agency's address.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.805

AMEND: 661-010-0012

RULE TITLE: Appearance and Representation Before the Board

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Requires that electronic mail addresses be included in filing, includes local governments in requirements regarding notices of related matters.

RULE TEXT:

(1) **Appearances Before the Board:** An individual shall either appear on their 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, then the Board will dismiss the appeal.

(2) **Notice of Representation:** If a party retains or changes counsel after an appeal is filed, including a change from one attorney to another or addition of an attorney within the same law firm, then the party shall file a notice of representation in writing. The notice of representation may not be combined with another document and shall contain the name, address, electronic mail address, and telephone number of the attorney. See Exhibit 8.

(3) **Representation by Co-Counsel:** Where a party is represented by more than one attorney, including more than one attorney within the same law firm, the party must designate one attorney as lead counsel, who will be that party's counsel for the purpose of receiving documents from the Board and other parties. Lead counsel is responsible for notifying co-counsel of documents and communications received from the Board and other parties.

(4) **Duty To Maintain Current Contact Information:** All parties to an appeal have a duty to maintain current contact information with the Board, including during the time that an appeal is pending or suspended, until the final opinion and order is issued. Unless updated contact information is provided, the Board shall rely on the contact information provided in the notice of intent to appeal, motion to intervene, or notice of representation.

(5) **Notice of Withdrawal:** Where an attorney withdraws from representation in an appeal, the attorney shall file a notice of withdrawal in writing. The notice of withdrawal may not be combined with another document. The notice of withdrawal shall contain the name, address, electronic mail address, and telephone number of the party and the name, address, electronic mail address, and telephone number of the new attorney, if one is being substituted. A notice of withdrawal shall be promptly filed and include any pending deadlines. See Exhibit 9.

(6) **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 their 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 their 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.

(7) **Notice of Related Matters:** When a party files a notice of intent to appeal, a motion to intervene, or a brief, or a local government transmits the record, if the party is aware of another appeal pending before the Board or in another forum that involves the same or a closely related land use matter, then the party shall file a notice with the Board identifying the related matter by title and case number. The notice may not be combined with another document. A party may likewise notify the Board if the party is aware of another matter pending in another forum that raises the same or a closely related legal issue. A party need not notify the Board of a related matter if another party has already done so. See Exhibit 10.

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

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

1 **EXHIBIT 8**
2 (661-010-0012)

3
4 **BEFORE THE LAND USE BOARD OF APPEALS**
5 **OF THE STATE OF OREGON**

6
7 Jane Smith,)
8)
9 Petitioner,)
10)
11 vs.) LUBA No. _____
12)
13 Willamette County,)
14)
15 Respondent.)
16

17 **NOTICE OF REPRESENTATION**

18
19 Notice is hereby given that [PETITIONER, INTERVENOR, OR
20 RESPONDENT] is represented by: [INDICATE NAME, ADDRESS,
21 ELECTRONIC MAIL ADDRESS, AND TELEPHONE NUMBER OF
22 ATTORNEY]. [IF MORE THAN ONE ATTORNEY IDENTIFIED] Attorney,
23 Taylor Doe, is designated as lead counsel.
24

25 [PETITIONER, INTERVENOR, OR RESPONDENT] has as their mailing
26 address and telephone number: [INDICATE MAILING ADDRESS,
27 ELECTRONIC MAIL ADDRESS, AND TELEPHONE NUMBER].
28

29 Dated this ____ day of _____, 20____.

30
31 _____
32 Signature

33
34 [Add Certificates of Filing and Service on separate page. See Exhibits 5 & 6.]
35

1 **EXHIBIT 9**
2 (661-010-0012)

3
4 **BEFORE THE LAND USE BOARD OF APPEALS**
5 **OF THE STATE OF OREGON**

6
7 Jane Smith,)
8)
9 Petitioner,)
10)
11 vs.) LUBA No. _____
12)
13 Willamette County,)
14)
15 Respondent.)
16

17 **NOTICE OF WITHDRAWAL**

18
19 Notice is hereby given that [PETITIONER'S, INTERVENOR'S, OR
20 RESPONDENT'S] attorney, [INDICATE NAME OF ATTORNEY], is
21 withdrawing as counsel in this appeal.

22
23 [PETITIONER, INTERVENOR, OR RESPONDENT] has as their mailing
24 address and telephone number: [INDICATE MAILING ADDRESS,
25 ELECTRONIC MAIL ADDRESS, AND TELEPHONE NUMBER].

26
27 [PETITIONER, INTERVENOR, OR RESPONDENT] will proceed *pro se* [OR]
28 will be represented by: [INDICATE NAME, ADDRESS, ELECTRONIC MAIL
29 ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY]. [IF MORE
30 THAN ONE ATTORNEY IDENTIFIED] Attorney, Taylor Doe, is designated as
31 lead counsel.

32
33 [INDICATE APPEAL STATUS AND NEXT PENDING DEADLINE.] This
34 appeal is currently suspended. [OR] This appeal is in briefing. The response brief
35 is due [DATE].
36
37
38

1
2
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9

Dated this ____ day of _____, 20__.

Signature

[Add Certificates of Filing, Service, and, if necessary, Authenticity on separate page. See Exhibits 5, 6, & 11.]

1 **EXHIBIT 10**
2 (661-010-0012)

3
4 **BEFORE THE LAND USE BOARD OF APPEALS**
5 **OF THE STATE OF OREGON**
6

7 Jane Smith,)
8)
9 Petitioner,)
10)
11 vs.) LUBA No. _____
12)
13 Willamette County,)
14)
15 Respondent.)
16

17 **NOTICE OF RELATED MATTERS**
18

19 Notice is hereby given that [PETITIONER, INTERVENOR, OR
20 RESPONDENT] is aware of the following related matters:
21

22 SMITH v. CITY OF WILLAMETTE

23 LUBA No. 2022-000

24 Filed: 01/01/2022

25 Status: Pending Record

26 Relation to current matter: [PETITIONER, INTERVENOR, OR
27 RESPONDENT] is the same party appealing a permit contingent on this
28 pending appeal.
29

30 SMITH v. CITY OF WILLAMETTE

31 A220000

32 Filed: 01/01/2022

33 Status: Pending Briefing

34 Relation to current matter: [PETITIONER, INTERVENOR, OR
35 RESPONDENT] has appealed a related LUBA decision regarding a
36 previous stage of a subdivision plan.
37

1 [PETITIONER, INTERVENOR, OR RESPONDENT] will file an updated
2 notice if [PETITIONER, INTERVENOR, OR RESPONDENT] becomes aware
3 of or initiates any related matters of which [PETITIONER, INTERVENOR, OR
4 RESPONDENT] has not already notified the Board.

5
6 Dated this ____ day of _____, 20__.

7
8 _____
9 Signature

10
11 [Add Certificates of Filing and Service on separate page. See Exhibits 5 & 6.]
12

AMEND: 661-010-0015

RULE TITLE: Notice of Intent to Appeal

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Requires that electronic mail addresses be included in filing, reduces number of copies to be included with filing.

RULE TEXT:

(1) Filing of Notice:

(a) The Notice, together with one copy, and the filing fee required by section (4) of this rule, shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final or within the time provided by ORS 197.830(3)–(5). A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed is mailed to parties entitled to notice under ORS 197.615. A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) The date of filing a notice of intent to appeal is:

(A) The date the Notice is received by the Board;

(B) The date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, the date of the receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number is the date of filing; or

(C) The date the Notice is deposited with or dispatched for delivery by a commercial delivery service, provided the party filing the Notice has proof from the commercial delivery service of such deposit or dispatch date. Proof of such deposit or dispatch date includes a receipt from the commercial delivery service showing the date the Notice is deposited with the commercial delivery service or a receipt from the commercial delivery service's online tracking service showing the date the Notice is dispatched for delivery by the commercial delivery service.

(c) If a Notice is received without payment of the fee required by section (4) of this rule, the petitioner will be given an opportunity to submit the required fee. If the filing fee is not received within the time set by the Board, the Board shall dismiss the appeal.

(d) If the Board determines that a Notice identifies more than one final decision as the subject of appeal, the Board shall notify the petitioner. The Board shall dismiss the Notice if the petitioner fails to submit within the date specified by the Board either a written election to appeal only one decision, or a separate Notice and separate filing fee, as required by section (4) of this rule, for each additional decision.

(2) Service of Notice: The Notice shall be served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the Notice is required to be filed. Service of the Notice as required by this section may be in person, by first-class or priority mail, or by commercial delivery service. However, where the local government provides only an electronic mail address for a person identified in the Notice as required by subsection (3)(f)(D), service shall be by electronic mail. Mail service is complete on deposit in the mail. Commercial delivery service is complete on deposit with or dispatch for delivery by the commercial delivery service.

(3) Contents of Notice: The Notice shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as petitioner(s), and the name of the governing body, identifying the governing body as respondent;

(b) Below the caption the heading "Notice of Intent to Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed, or a copy of either the notice of decision or the decision to be reviewed;

(f) The name, address, electronic mail address, and telephone number of each of the following:

(A) The Petitioner. The petitioner's name, address, electronic mail address, and telephone number shall be included. If an attorney represents the petitioner, then the attorney's name, address electronic mail address, and telephone number shall also be included. If the petitioner is represented by co-counsel, then one attorney shall be designated as lead counsel. See OAR 661-010-0012(3). If two or more petitioners join in a notice of intent to appeal and are unrepresented by an attorney, then one petitioner shall be designated as the lead petitioner, but the Notice shall include the names, addresses, electronic mail addresses, and telephone numbers of all such unrepresented petitioners. See OAR 661-010-0012(6)(a);

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, then the name, address, electronic mail address, and telephone number of the applicant's attorney shall also be included;

(D) Any other person to whom written notice of the land use decision or limited land use decision was mailed, either through the United States Postal Service, other delivery service, or by electronic mail, as shown on the governing body's records. The telephone number may be omitted for any such person.

(g) A statement advising all persons, other than the governing body, that in order to participate in the review proceeding a person must file a motion to intervene pursuant to OAR 661-010-0050.

(h) On the last page, a signature by each petitioner, or the attorney representing that petitioner, on whose behalf the Notice is filed.

(i) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

(j) A statement certified by the person who made the filing of the date and manner of document delivery. See Exhibit 1.

(4) Filing Fee: The Notice shall be accompanied by a filing fee of \$300 payable to the Land Use Board of Appeals.

Payment may be submitted by check, State of Oregon purchase order or money order. If a check providing the filing fee is returned for insufficient funds and the filing fee is not paid within the time set by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.620, ORS 197.830(1), ORS 197.830(9)

1 **EXHIBIT I**
2 (661-010-0015)
3

4 **BEFORE THE LAND USE BOARD OF APPEALS**
5 **OF THE STATE OF OREGON**
6

7 Jane Smith,)
8)
9 Petitioner,)
10)
11 vs.)
12)
13 Willamette County,)
14)
15 Respondent.)

LUBA No. _____

16 **NOTICE OF INTENT TO APPEAL**

17 **I.**

18 Notice is hereby given that petitioner intends to appeal that land use
19 decision or limited land use decision of respondent entitled [INDICATE TITLE
20 OF LAND USE DECISION OR LIMITED LAND USE DECISION], which
21 became final on [INDICATE DATE] and which involves [SET FORTH A
22 BRIEF STATEMENT OF THE NATURE OF THE DECISION OR,
23 PREFERABLY, ATTACH A COPY OF THE DECISION].

24 **II.**

25 (a) Petitioner, Jane Smith, has as their mailing address and telephone
26 number: [INDICATE MAILING ADDRESS, ELECTRONIC MAIL
27 ADDRESS, AND TELEPHONE NUMBER OF PETITIONER].

28 (b) Petitioner, Jane Smith, is represented by: [INDICATE NAME,

1 ADDRESS, ELECTRONIC MAIL ADDRESS, AND TELEPHONE NUMBER
2 OF PETITIONER’S ATTORNEY]. [IF MORE THAN ONE ATTORNEY
3 IDENTIFIED] Attorney, Taylor Doe, is designated as lead counsel.

4 or

5 (b) Petitioner, Jane Smith, represents themselves. [IF MORE THAN ONE
6 SELF-REPRESENTED PETITIONER] Petitioner, Jane Smith, is designated as
7 lead petitioner.

8 III.

9 (a) Respondent, Willamette County, has as its mailing address and
10 telephone number: [INDICATE MAILING ADDRESS, ELECTRONIC MAIL
11 ADDRESS, AND TELEPHONE NUMBER OF GOVERNING BODY].

12 (b) Respondent, Willamette County, has as its legal counsel: [INDICATE
13 NAME, ADDRESS, ELECTRONIC MAIL ADDRESS, AND TELEPHONE
14 NUMBER OF GOVERNING BODY’S ATTORNEY].

15 IV.

16 (a) Applicant, John Developer, has as its mailing address and telephone
17 number: [INDICATE MAILING ADDRESS. ELECTRONIC MAIL
18 ADDRESS, AND TELEPHONE NUMBER OF APPLICANT].

19 (b) Applicant, John Developer, was represented in the proceeding below
20 by: [INDICATE NAME, ADDRESS, ELECTRONIC MAIL ADDRESS, AND
21 TELEPHONE NUMBER OF APPLICANT’S ATTORNEY].

22 (c) Other persons mailed written notice of the land use decision or limited

1 land use decision by Willamette County, as indicated by its records in this matter,
2 include: [INDICATE NAMES, ELECTRONIC MAIL ADDRESSES, AND
3 ADDRESSES OF ALL PERSONS WHOM THE GOVERNING BODY'S
4 RECORDS INDICATE WERE MAILED OR EMAILED WRITTEN NOTICE
5 OF THE LAND USE DECISION OR LIMITED LAND USE DECISION].

6 NOTICE:

7 Anyone designated in paragraph IV of this Notice who desires to
8 participate as a party in this case before the Land Use Board of Appeals must file
9 with the Board a Motion to Intervene in this proceeding as required by OAR 661-
10 010-0050.

11 Dated this ____ day of _____, 20__.

12
13
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15
16
17
18

Petitioner (each petitioner must sign)

or

Attorney for Petitioner(s)

1 CERTIFICATE OF FILING OF NOTICE OF INTENT TO APPEAL

2
3 I hereby certify that, on [INDICATE DATE], I filed the original of this Notice of
4 Intent to Appeal, together with one copy, with the Land Use Board of Appeals,
5 201 High Street SE, Suite 600, Salem, OR 97301-3398, by [INDICATE
6 MANNER OF FILING, *E.G.*, CERTIFIED, PRIORITY, OR FIRST-CLASS
7 MAIL, OR COMMERCIAL DELIVERY SERVICE].

8
9 Dated this ____ day of _____, 20____.

10
11 _____
12 Signature
13

14 CERTIFICATE OF SERVICE OF NOTICE OF INTENT TO APPEAL

15
16 I hereby certify that, on [INDICATE DATE], I served a true and correct copy of
17 this Notice of Intent to Appeal on all persons listed in paragraphs III and IV of
18 this Notice pursuant to OAR 661-010-0015(2) by [INDICATE MANNER OF
19 SERVICE, *E.G.*, IN-PERSON DELIVERY, FIRST-CLASS OR PRIORITY
20 MAIL, OR COMMERCIAL DELIVERY SERVICE].

21
22 Dated this ____ day of _____, 20____.

23
24 _____
25 Signature
26

AMEND: 661-010-0021

RULE TITLE: Withdrawal of Decision for Reconsideration

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Requires that electronic mail addresses be included in filing, reduces the number of required copies.

RULE TEXT:

(1) If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the Board on or before the date the record is due or, on appeal of a decision under ORS 197.610 to 197.625 or relating to the development of a residential structure, the local government shall file a notice of withdrawal prior to the filing of the respondent's brief. A copy of the decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.

(2) The filing of a notice of withdrawal under section (1) of this rule shall suspend proceedings on the appeal until a decision on reconsideration is filed with the Board, or the time designated therefor expires, unless otherwise ordered by the Board. If no decision on reconsideration is filed within the time designated therefor, the Board shall issue an order restarting the appeal.

(3) A copy of the decision on reconsideration under section (1) of this rule shall be filed with the Board within 7 days after the local government or state agency issues the decision on reconsideration and copies of the decision on reconsideration shall be served on all parties. The first page of the decision on reconsideration, or an accompanying transmittal letter, shall indicate the title and case number of the pending appeal before the Board.

(4) Petitioner(s) may seek review of the decision on reconsideration as provided in section (5) of this rule. Any other person may file a notice of intent to appeal the decision on reconsideration as provided in OAR 661-010-0015. If such an appeal is filed, and a petitioner files an amended notice of intent to appeal or refiles the original notice of intent to appeal as provided in section (5) of this rule, any party may move to consolidate the appeals challenging the decision on reconsideration as provided in OAR 661-010-0055.

(5) After the filing of a decision on reconsideration:

(a) If the petitioner wishes review by the Board of the decision on reconsideration:

(A) Except as provided in paragraph (B) of this subsection, the petitioner shall file an amended notice of intent to appeal together with one copy within 21 days after the decision on reconsideration is received by the Board.

(B) In the event the local government or state agency affirms its decision or modifies its decision with only minor revisions, the petitioner may refile the original notice of intent to appeal, with the date of the decision on reconsideration indicated thereon, together with two copies within 21 days after the decision on reconsideration is received by the Board.

(b) Refiling of the original notice of intent to appeal or filing of an amended notice of intent to appeal is accomplished by mailing by first-class, priority, certified, or registered mail, or depositing with or dispatching for delivery by a commercial delivery service, on or before the due date.

(c) An amended notice of intent to appeal or a refiled notice of intent to appeal under paragraphs (A) and (B) of subsection (5)(a) of this rule shall conform with the requirements of OAR 661-010-0015(3) and shall be served on the following:

(A) All parties to the appeal suspended pursuant to section (2) of this rule;

(B) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, then the name, address, electronic mail address, and telephone number of the applicant's attorney shall also be included;

(C) Any other person to whom written notice of the original or reconsidered land use decision or limited land use decision was mailed, either through the United States Postal Service, other delivery service, or by electronic mail, as shown on the governing body's records. The telephone number may be omitted for any such person.

(d) No additional filing fee or deposit for costs (if a deposit was required to file the original notice of intent to appeal)

shall be required to refile the original notice of intent to appeal or file an amended notice of intent to appeal under subsection (5)(a) of this rule.

(e) If no amended notice of intent to appeal is filed or no original notice of intent to appeal is refiled, as provided in subsection (5)(a) and (b) of this rule, the appeal will be dismissed.

(f) Parties who have already intervened in the appeal need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refiled.

(6) The local government or state agency shall, within 21 days after service of the amended notice of intent to appeal or refiled original notice of intent to appeal under subsection (5)(a) of this rule, transmit to the Board a certified copy of the record of the proceeding under review in accordance with OAR 661-010-0025. The record submitted by the local government or state agency in an appeal of a decision on reconsideration shall include the record of the original decision and the decision on reconsideration.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

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

AMEND: 661-010-0025

RULE TITLE: Record

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Allows for the record to be filed in flash drive, requires the record to be served on all parties.

RULE TEXT:

(1) Contents of Record: Unless the Board otherwise orders, or the parties otherwise agree in writing, the record shall include at least the following:

(a) The final decision including any findings of fact and conclusions of law.

(b) All written testimony and all exhibits, maps, documents or other materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.

(c) Minutes and tape, CD, DVD or other media recordings of the meetings conducted by the final decision maker, if created by the final decision maker or incorporated into the record by the final decision maker. A verbatim transcript of media recordings shall not be required, but if a transcript has been prepared by the governing body, it shall be included.

(d) Notices of proposed action, public hearing and adoption of a final decision, if any, published, posted or mailed during the course of the land use proceeding, including affidavits of publication, posting or mailing. Such notices shall include any notices concerning amendments to acknowledged comprehensive plans or land use regulations given pursuant to ORS 197.610(1) or 197.615(1) and (2).

(2) Transmittal of Record:

(a) The governing body shall, within 21 days after service of the Notice on the governing body, transmit to the Board a certified paper copy of the record of the proceeding under review. The governing body may, however, retain any large maps, media recordings, or difficult-to-duplicate documents and items until the date of oral argument. Where documents are retained until the date of oral argument, those retained documents shall be identified in the table of contents, as provided in OAR 661-010-0025(4)(B). Transmittal of the record is accomplished by mailing by first-class, priority, certified, or registered mail, or depositing with or dispatching for delivery by a commercial delivery service, on or before the due date.

(b) As an alternative to transmitting a certified paper copy of the record, a local government may transmit the record to the Board in electronic format. Transmittal of an electronic copy is accomplished by mailing by first-class, priority, certified, or registered mail, or depositing with or dispatching for delivery by a commercial delivery service, two complete copies of the record on optical disks or flash drive, with documents recorded in a PDF format, on or before the due date. If the record exceeds 100 pages, the electronic copy shall be searchable. A local government may transmit the record in electronic form, and also retain items until oral argument as described in OAR 661-010-0025(2)(a).

(3) Service of Record:

(a) Contemporaneously with transmittal, the governing body shall serve a paper copy of the record in the format that it was transmitted to the Board, exclusive of large maps, media recordings, and difficult-to-duplicate documents and items, on all parties to the appeal. The governing body shall also serve a copy of any media recording included in the record, or any recording from which a transcript included in the record was prepared, on all parties to the appeal.

(b) By prior agreement of the party to be served, service of the record as described in OAR 661-010-0025(3)(a) may be in a format that differs from how the record was transmitted to the Board.

(4) Specifications of Record:

(a) The record, including any supplements or amendments, shall:

(A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in the Notice or in the Board's order consolidating multiple appeals, and the Board's numerical designation for the case, and shall indicate the numerical designation given the land use decision or limited land use decision by the governing body; if the record consists of multiple volumes, the cover shall indicate the page numbers contained in each volume;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins.

See Exhibit 2.

(i) Where an item listed in the table of contents includes attached exhibits, the exhibits shall be separately listed as an exhibit to the item. Where the exhibit is also a document that is being retained under OAR 661-010-0025(2), the exhibit shall also be listed at the end of the table of contents as provided in subsection (ii) below.

(ii) Where large maps, media recordings, or other items or documents are retained by the governing body under section (2) of this rule, those retained items shall be separately listed at the end of the table of contents;

(C) Be securely fastened on the left side;

(D) Have pages numbered consecutively, with the page number at the bottom outside corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item first. Exhibits attached to a record item shall be included according to the numerical or alphabetical order in which they are attached, not the date of the exhibits. Upon motion of the governing body, the Board may allow the record to be organized differently.

(b) Where the record includes the record of a prior appeal to this Board, the table of contents shall specify the LUBA number of the prior appeal, and indicate that the record of the prior appeal is incorporated into the record of the current appeal.

(c) A record that does not substantially conform to the preceding requirements may be rejected by the Board.

(5) If no record objection is filed and the governing body transmits an amendment to the record, the date the amendment is received by the Board shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.830(10)(a), ORS 197.830(14), ORS 197.835

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EXHIBIT 2
(661-010-0025)

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- A. DVD recording of City Council meeting June 1, 2013.
- B. City Map on posterboard; see Record 99.
- C. Audio Recording of Planning Commission hearing November 1, 2012.
- D. The local record in the prior LUBA appeal, Younger v. City of Portland, LUBA No. XXXX-XXX. **[NOTE: LUBA DOES NOT RETAIN ITS RECORD COPIES. IF THE COPY THAT WAS ON FILE WITH LUBA WAS DISCARDED OR PICKED UP BY THE RESPONDENT, THEN THE RESPONDENT MUST RETRANSMIT TO LUBA THE LOCAL GOVERNMENT RECORD IN THE PRIOR APPEAL.]**

AMEND: 661-010-0030

RULE TITLE: Petition for Review

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Removes requirement for including a copy with a filing, requires that electronic mail addresses be included in filing.

RULE TEXT:

(1) Filing and Service of Petition: Unless the Board orders otherwise pursuant to ORS 197.830(10)(a), the petition for review 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, forfeiture of the filing fee to the governing body, and an award of up to \$200 for the cost of preparation of the record payable from the petitioner(s) 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. In consolidated appeals in which the petitioners are the same the petitioners shall be limited to a single petition for review. Within fourteen days after the consolidated record is received, petitioners may request permission to exceed the applicable word limit in writing and shall state the reasons why an overlength petition for review will assist the Board in resolving the appeal.

(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, electronic mail addresses, and telephone numbers of all parties unrepresented by an attorney. If a party is represented by an attorney, the name, address, electronic mail 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.

(C) The brief includes 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).

(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), ORS 197.830(12), ORS 197.830(13)(a)

1 **EXHIBIT 7**
2 (661-010-0030)

3
4 Certificate of Compliance with Brief Length, Type Size,
5 and Copy of Decision Requirements

6
7 Brief Length

8
9 I certify that (1) this brief complies with the word-count limitation in OAR 661-
10 010-0030(2) and (2) the word count of this brief as described in OAR 661-010-
11 0030(2) is _____ words. [OR]

12
13 I certify that (1) I do not have access to a word-processing system that provides
14 a word count; (2) this brief complies with the page limitation in OAR 661-010-
15 0030(2); and (3) the number of pages in this brief is _____ pages. [OR]

16
17 The board granted a motion to exceed the length limit for this brief. The order
18 granting that motion was dated _____ and permits a brief of up to _____.
19 I certify that (1) this brief complies with that order and (2) the word count of this
20 brief (as described in OAR 661-010-0030(2)) is _____ words [OR] the
21 number of pages in this brief is _____ pages.

22
23 Type Size

24
25 I certify that the size of the type in this brief is not smaller than 14 point for both
26 the text of the brief and footnotes as required by OAR 661-010-0030(2).

27
28 Copy of Decision [FOR PETITION FOR REVIEW]

29
30 I certify that the petition for review contains a copy of the challenged decision,
31 including any adopted findings of fact and conclusions of law as required by
32 OAR 661-010-0030(4)(e).

33
34 Dated this ____ day of _____, 20____.

35
36 _____
37 Signature

AMEND: 661-010-0035

RULE TITLE: Respondent's Brief

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Removes requirement for including a copy with a filing, updates references to respondent's briefs.

RULE TEXT:

(1) Filing and Service of Brief: Unless otherwise provided by the Board, respondent's brief shall be filed within 42 days after the date the record is received or settled by the Board. See OAR 661-010-0025(2) and 661-010-0026(6). A copy of the respondent's brief shall be served on the petitioner or the lead petitioner, if one is designated, and all intervenors or the lead intervenor, if one is designated.

(2) Specifications of Brief: Respondent's brief shall conform to the specifications of the petition for review at OAR 661-010-0030(2), except that the brief shall have red front and back covers. If there is more than one respondent, the front cover page shall specify which respondent is filing the brief. Respondent's brief shall be subject to OAR 661-010-0030(3). If multiple petitions for review or intervenor-petitioner's briefs are filed, then the respondent and any intervenors-respondents may each file a consolidated brief in response, which shall be limited to 15,000 words, or 52 pages, unless permission for a longer brief is given by the Board. Respondent and intervenors-respondents are encouraged to coordinate their briefing to avoid repetitive and overlapping arguments.

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the petition for review, but need not contain the final decision. The respondent shall specifically accept the petitioner's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The statement shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

(b) Respondent shall accept or challenge petitioner's statement of the Board's jurisdiction and petitioner's statement of standing. The basis for any challenge shall be stated. If respondent contends that the facts alleged by petitioner in support of standing are not true, respondent shall specify which allegations are contested.

(c) A respondent's brief shall not include an assignment of error or cross-assignment of error.

(4) The respondent's brief may include appendices containing verbatim transcripts of media recordings that are part of the record.

(5) Amended Brief: The Board may allow the filing of an amended brief in accordance with OAR 661-010-0005.

(6) Respondent's briefs that respond to a cross petition for review shall be filed within the time limit required for filing the respondent's brief under subsection (1) of this rule and must comply in all respects with the requirements governing respondent's briefs.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

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

AMEND: 661-010-0038

RULE TITLE: State Agency Briefs

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Removes requirement for including a copy with a filing, clarifies the form briefing shall be prescribed.

RULE TEXT:

A state agency that wishes to file a brief under ORS 197.830(8) shall file the brief within the time required for respondent's brief. A state agency brief shall have yellow front and back covers. A state agency brief shall follow the form prescribed for the petition for review, but need not contain the final decision and may, if the state agency is arguing in favor of the respondent's position, follow the form prescribed for the respondent's brief. A state agency brief shall be accompanied by a filing fee of \$100.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.830(8)

AMEND: 661-010-0039

RULE TITLE: Reply Brief

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Removes requirement for including a copy with a filing.

RULE TEXT:

A reply brief shall be permitted. A reply brief shall be filed 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: 08/30/2024

RULE SUMMARY: Responds to rule renumbering, clarifies requirements for requesting overlength oral argument, requires motion to be filed as a separate document.

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.
- (4) 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.
- (5)(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 and intervenor-petitioners shall share the same 15 minutes.
- (b) The respondent(s) shall be allowed 15 minutes to respond. Multiple respondents shall share the same 15 minutes. For the purposes of this rule, an intervenor-respondent who files a cross petition for review shall be considered a respondent and shall share in the same 15 minutes allowed for respondent(s).
- (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.
- (d) For purposes of this rule, "in-person oral argument" means all parties and participating board members physically appear in a hearing room and "remote oral argument" means all parties and participating board members appear by video conference call. Except as otherwise provided below, the case will be set for remote oral argument.
- (A) The Board may determine that the needs of the Board will be best served by in-person oral argument and may direct the parties to appear for in-person oral argument.
- (B) A party may move in writing for in-person oral argument at any time after the record is received but in no event later than seven days after the petition for review is filed. A motion for in-person argument must explain the circumstances that support the request and demonstrate good cause for arguing in-person. Good cause does not include a mere preference for in-person oral argument. The moving party must confer with all other parties and shall include a statement of compliance with this section at the time of filing their motion that states that no party objects, or that states that a party objects to in-person oral argument and, if the other parties' reasons for objecting are known, the motion shall set out those reasons. Any party may file a response to a motion for in-person oral argument within seven days after the filing of the motion for in-person oral argument.
- (6) 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 as a separate document.
- (7) 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.
- (8) The Board may conduct oral argument in-person in accordance with (5)(d) of this rule, or by telephone or video conference call.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

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

AMEND: 661-010-0046

RULE TITLE: Taking Official Notice

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Clarifies when a motion to take official notice is unnecessary.

RULE TEXT:

(1) Grounds for Taking Official Notice: The Board may take official notice of relevant law as defined in ORS 40.090.

(2) Motions to Take Official Notice:

(a) A motion to take official notice shall contain a statement explaining with particularity what the material sought to be noticed is intended to establish, how it is relevant to an issue on appeal, and the authority for notice under ORS 40.090. The motion to take official notice evidence shall be filed in writing and as a separate document and shall not be contained within a brief or other filing.

(b) A motion to take official notice is unnecessary where the items in ORS 40.090(7) are relied upon in the decision, are within or cited to in the record, or are included with a petition for review according to OAR 661-010-0030(4)(f).

(3) Any party may file a response within 14 days of the date of service of the motion to take official notice.

STATUTORY/OTHER AUTHORITY: ORS 197. 820(4)

STATUTES/OTHER IMPLEMENTED: ORS 40.090

AMEND: 661-010-0050

RULE TITLE: Intervention

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Requires the inclusion of an electronic mail address in filings, updates reference to intervenor's briefs.

RULE TEXT:

(1) Standing to Intervene: The applicant and any person who appeared before the local government, special district or state agency may intervene in a review proceeding before the Board. Status as an intervenor is recognized when a motion to intervene is filed, but the Board may deny that status at any time.

(2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant to OAR 661-010-0021. The motion to intervene (see Exhibit 3) shall:

(a) List the names, addresses, electronic mail addresses, and telephone numbers of all persons moving to intervene. In addition, if an attorney represents the intervenor(s), the attorney's name, address, electronic mail addresses, and telephone number shall also be included. If an intervenor is represented by co-counsel, then one attorney shall be designated as lead counsel. See OAR 661-010-0012(3). If two or more intervenors join in a motion to intervene and are unrepresented by an attorney, then one intervenor shall be designated as the lead intervenor, but the motion to intervene shall include the names, addresses, electronic mail addresses, and telephone numbers of all such unrepresented intervenors. See OAR 661-010-0012(6)(b);

(b) Identify the decision that is being challenged in the appeal for which intervention is sought by including the following:

(A) The full title of the decision that is being challenged in the appeal, as it appears on the final decision;

(B) The date the decision that is being challenged in the appeal became final;

(C) A concise description of the decision that is being challenged in the appeal, or a copy of either the notice of decision or the decision being challenged; and

(D) The appeal number assigned to the appeal by the Board, if one has been assigned as of the date of the filing of the motion to intervene.

(c) State whether the party is intervening on the side of the petitioner or the respondent;

(d) State the facts which show the party is entitled to intervene, supporting the statement with affidavits or other proof;

(e) On the last page, be signed by each intervenor, or the attorney representing that intervenor, on whose behalf the motion to intervene is filed; and

(f) Be served upon the Board and all parties.

(3) Filing Fee: A motion to intervene shall be accompanied by a filing fee of \$100 for each appeal in which intervention is sought, payable to the Land Use Board of Appeals. Where multiple parties file a single joint motion to intervene, only one fee per appeal is required. If a motion to intervene is received without payment of the filing fee or a check providing the filing fee is returned for insufficient funds, the intervenor will be given an opportunity to submit the required fee. If the filing fee is not paid within the time set by the Board, the Board shall deny the motion to intervene. Cash shall not be accepted.

(4) Intervention in an appeal that is consolidated with other appeals does not allow the intervenor to appear as a party with respect to those appeals in which the intervenor has not filed a timely motion to intervene.

(5) Parties who have already intervened in an appeal need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refiled pursuant to OAR 661-010-0021.

(6) Intervenor's Brief:

(a) An intervenor-petitioner's brief shall be filed within the time limit for filing the petition for review, and shall satisfy the requirements for a petition for review in OAR 661-010-0030.

(b) An intervenor-respondent's brief shall be filed within the time for filing a respondent's brief and shall satisfy the

requirements for a respondent's brief in OAR 661-010-0035.

(c) Co-intervenors who file a single motion to intervene shall be limited to a single joint intervenor-petitioner's or intervenor-respondent's brief, as appropriate, and a single joint cross-petition for review or response to a cross-petition for review, as appropriate.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.830(2), ORS 197.830(7)

1 **EXHIBIT 3**
2 (661-010-0050)

3
4 **BEFORE THE LAND USE BOARD OF APPEALS**
5 **OF THE STATE OF OREGON**

6
7 Jane Smith,)
8)
9 Petitioner,)
10)
11 vs.) LUBA No. _____
12)
13 Willamette County,)
14)
15 Respondent.)

16 **MOTION TO INTERVENE**

17 **I.**

18 (a) John Davis moves to intervene on the side of [PETITIONER OR
19 RESPONDENT] in the above-captioned appeal.

20 (b) John Davis has as their mailing address and telephone number:
21 [INDICATE MAILING ADDRESS, ELECTRONIC MAIL ADDRESS, AND
22 TELEPHONE NUMBER OF MOVANT].

23 (c) John Davis is represented by: [INDICATE NAME, ADDRESS,
24 ELECTRONIC MAIL ADDRESS, AND TELEPHONE NUMBER OF
25 MOVANT’S ATTORNEY]. [IF MORE THAN ONE ATTORNEY
26 IDENTIFIED] Attorney, Denise Neil, is designated as lead counsel.

27 or

1 (c) John Davis represents themselves. [IF MORE THAN ONE SELF-
2 REPRESENTED MOVANT] John Davis is designated as lead intervenor.

3 II.

4 The appealed decision is that land use decision or limited land use decision
5 of respondent entitled [INDICATE TITLE OF LAND USE DECISION OR
6 LIMITED LAND USE DECISION], which became final on [INDICATE DATE]
7 and which involves [SET FORTH A BRIEF STATEMENT OF THE NATURE
8 OF THE DECISION OR, PREFERABLY, ATTACH A COPY OF THE
9 DECISION].

10 III.

11 The facts establishing movant's right to intervene are as follows: [SET
12 FORTH STATEMENT OF FACTS WITH REFERENCES TO THE RECORD
13 OR ATTACH AFFIDAVITS OR OTHER PROOF].

14 IV. [OPTIONAL]

15 In support of this motion, John Davis relies on the attached [affidavit,
16 memorandum of law, or both].

17 Dated this ____ day of _____, 20__.

18
19
20 _____
John Davis

21 or

22
23 _____
Denise Neil, Attorney for John Davis

24
25 [Add Certificates of Filing and Service on separate page. See Exhibits 5 & 6.]
26

AMEND: 661-010-0052

RULE TITLE: Amicus Participation

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Removes requirement for including a copy with a filing.

RULE TEXT:

(1) A person or organization may appear as amicus only by permission of the Board on written motion. The motion shall set forth the interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding.

(2) Appearance as amicus shall be by brief only, unless the Board specifically authorizes or requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal. Where amicus is aligned with the interests of the petitioner(s), the amicus brief is due seven days after the date the petition for review is due. In all other circumstances, the amicus brief is due within the time required for filing respondent's brief. No filing fee is required. An amicus brief shall have green front and back covers.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.805, ORS 197.830(13)(a)

AMEND: 661-010-0065

RULE TITLE: Motions

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Clarifies internal rule reference regarding motions for in-person oral argument.

RULE TEXT:

(1) When Motion is Appropriate: Unless these rules or applicable statutes provide another form of application, a request for an order or relief shall be made by filing a motion in writing for such order or relief. A motion shall show proof of service on all parties.

(2) Time of Filing: A party seeking to challenge the failure of an opposing party to comply with any of the requirements of statutes or Board rules shall make the challenge by motion filed with the Board and served on all parties within 14 days after the moving party obtains knowledge of such alleged failure. However, motions to dismiss for lack of jurisdiction may be filed at any time. An opposing party may, within 14 days from the date of service of a motion, file a response, except as allowed by OAR 661-010-0040(5)(d)(ii) for responses to motions for in-person oral argument.

(3) How Submitted: Parties shall submit all motions without oral argument unless otherwise directed by the Board. All motions must be filed as a separate document and shall not be included with any other filing. A party that desires a telephone conference on a motion shall include a request for a telephone conference in its motion or response. The Board may, at its discretion, conduct a telephone conference with the parties to consider any motion.

(4) Effect of Filing Motion: Except as provided in OAR 661-010-0026(6) with regard to objections to the record, or as may otherwise be ordered by the Board on its own motion, the filing of a motion shall not suspend the time limits for other events in the review proceeding.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.805

AMEND: 661-010-0075

RULE TITLE: Miscellaneous Provisions

NOTICE FILED DATE: 08/30/2024

RULE SUMMARY: Removes cost bills from the rule, clarifies how signatures will be accepted by the agency, removes the requirement for including a copy with most filings, specifies citation styles for opinion and orders, updates the agency's address in response to agency moving locations.

RULE TEXT:

(1) Attorney Fees and Forfeiture of Filing Fees:

(a) Time for Filing: The prevailing party may file 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) Forfeit of Filing Fee: 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 motion pursuant to this section requesting forfeiture of the filing fee, then the filing fee required by OAR 661-010-0015(4) shall be forfeited to the governing body. In addition, if the governing body files a motion pursuant to this section, the Board shall award the governing body up to \$200, payable from petitioner(s) to the governing body, as cost of preparation of the record. See OAR 661-010-0030(1).

(c) Attorney Fees:

(A) Attorney fees shall be awarded by the Board to the prevailing party as specified in ORS 197.830(15)(b) and (c); 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).

(d) 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.

(e) If a motion for attorney fees is filed, and the Board's decision is appealed to the Court of Appeals, the Board shall act on the 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 or electronic mail. Documents filed with the Board may include signatures that are:

(i) An original ink signature;

(ii) A facsimile signature; or

(iii) An electronic signature that includes the typed name of the filer and an indication that the typed name is intended to substitute for the filer's signature. If the filer is an attorney, the attorney's bar number and an indication of the party whom the attorney represents must appear as part of or in addition to the signature block. Where an electronic signature is relied upon, the filing shall be accompanied by a certificate of compliance attesting to the authenticity of the signature. See Exhibit 11. If multiple parties are joining in the filing, each party must attest to compliance and the filing shall be accompanied by written confirmation of support for the filing. The "/s/" form of signature is not an electronic signature for purposes of this rule.

(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) Mailing by first class or priority mail with the United States Postal Service on or before the due date. If the date of mailing is relied upon as the date of filing, the date of the postmark is the date of filing.
- (ii) Depositing with or dispatching for delivery by a commercial delivery service on or before the due date. Proof of such deposit or dispatch date includes a receipt from the commercial delivery service showing the date the filing is deposited with the commercial delivery service or a receipt from the commercial delivery service's online tracking service showing the date the filing is dispatched for delivery by the commercial delivery service.
- (C) Documents filed with the Board shall contain a statement certified by the person who made the filing of the date and manner of document delivery. See Exhibit 5.
- (b) Service:
- (A) Any document filed with the Board 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, by first-class or priority mail, or by commercial delivery service. Mail service is complete on deposit in the mail. Commercial delivery service is complete on deposit with or dispatch for delivery by the commercial delivery service.
- (C) Service copies of documents shall include a certificate showing the date and manner 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 and manner of service, 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: No copies of filings are required unless these rules or an order by the Board provide otherwise. See OAR 661-010-0015(1)(a).
- (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) 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) 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.
- (7) Address and Hours of the Board: Until October 31, 2024, the Board's address is 775 Summer Street NE, Suite 330, Salem Oregon, 97301-1283. Effective November 1, 2024, the Board's address is 201 High Street, SE, Suite 600, Salem Oregon, 97301-3398. Effective November 1, 2024, pleadings filed by commercial delivery service will only be accepted at 201 High Street SE, Suite 600, Salem, Oregon, 97301-3398. Until December 31, 2024, the Board will accept as correctly addressed pleadings filed by first class or certified mail that are addressed to either location. 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.
- (8) Citations to Board Decisions: Citations to Board decisions shall be in the following form:

- (a) For a Final Opinion and Order and an Orders included in LUBA Reporter volumes 1 through 81: John Doe v. XYZ County, 5 Or LUBA 654 (1981).
- (b) For an Order not included in LUBA Reporter volumes 1 through 81: John Doe v. XYZ County, LUBA No 80-123 (Feb 15, 1981) (slip order at 4).
- (c) For a Final Opinion and Order issued after December 31, 2020: John Doe v. XYZ County, LUBA No 2020-987 (Jan 1, 2021) (slip op at 7).
- (9) 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 (9)(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.
- (10) 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) The petitioner(s) in the transferred circuit court proceeding shall file with the Board a Notice of Transfer that contains the information required by OAR 661-010-0015(3), and shall serve the Notice of Transfer upon all persons required to be named in the Notice of Intent to Appeal pursuant to OAR 661-010-0015(2) and (3). The Notice of Transfer shall be filed within the time set by the Board. The date of the Notice of Transfer is served shall begin the running of the 21-day period within which a motion to intervene in the appeal may be filed.
- (c) After an appeal is transferred to LUBA and the Notice of Transfer is received by the Board, the Board, by letter, will establish a deadline for the respondent to transmit the record.
- (11) 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. 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.
- (12) 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.

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

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

197.845(3)

1 **EXHIBIT 5**
2 (661-010-0075)

3
4 **CERTIFICATE OF FILING (GENERAL)**
5

6 I hereby certify that, on [INDICATE DATE], I filed the original of this [NAME
7 OF DOCUMENT], with the Land Use Board of Appeals, 201 High Street SE,
8 Suite 600, Salem, OR 97301-3398, by [INDICATE MANNER OF FILING,
9 *E.G.*, CERTIFIED, PRIORITY, OR FIRST-CLASS MAIL, OR
10 COMMERCIAL DELIVERY SERVICE].

11 Dated this ____ day of _____, 20____
12

13 _____
14 Signature
15 _____
16

17 **EXHIBIT 6**
18 (661-010-0075)

19
20 **CERTIFICATE OF SERVICE (GENERAL)**
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22 I hereby certify that, on [INDICATE DATE], I served a true and correct copy of
23 this [NAME OF DOCUMENT] on all parties by [INDICATE MANNER OF
24 SERVICE, *E.G.*, IN-PERSON DELIVERY, FIRST-CLASS OR PRIORITY
25 MAIL, OR COMMERCIAL DELIVERY SERVICE] to the following names and
26 addresses:
27

28	NAME	NAME
29	ADDRESS	ADDRESS
30	CITY/STATE/ZIP	CITY/STATE/ZIP

31
32 Dated this ____ day of _____, 20____.
33

34 _____
35 Signature
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EXHIBIT 11
(661-010-0075)

CERTIFICATE OF AUTHENTICITY

I hereby certify that, on [INDICATE DATE], I filed and served the original of this [NAME OF DOCUMENT], with the Land Use Board of Appeals, 201 High Street SE, Suite 600, Salem, OR 97301-3398, and attest that the typed signature below and those within this document are a representation that, under penalty of perjury, the document is true and correct to the best of my knowledge and belief.

Dated this ____ day of _____, 20__

Signature

Robert Anderson

Robert Anderson

[Oregon State Bar No. 000001]

[Attorney for Petitioner Smith.]