

27.14 LUBA Procedures/Rules – Official Notice. An intergovernmental agreement that is an official enactment of the city and county and that acts to define the substantive law that applies to land use applications within an urban growth area is subject to official notice under Oregon Evidence Code 202(7). *Stoloff v. City of Portland*, 51 Or LUBA 812 (2006).

27.14 LUBA Procedures/Rules – Official Notice. LUBA may take official notice of city annexation resolutions in order to recognize the applicable law, but LUBA does not have authority to take notice of the facts contained in those resolutions regarding the number of people annexed into the city. *Friends of Deschutes County v. Deschutes County*, 49 Or LUBA 100 (2005).

27.14 LUBA Procedures/Rules – Official Notice. That LUBA may take judicial notice of an ordinance, comprehensive plan or enactment pursuant to OEC 202(7) does not mean that that item is or should be part of the record. *Wal-Mart Stores, Inc. v. City of Medford*, 47 Or LUBA 650 (2004).

27.14 LUBA Procedures/Rules – Official Notice. Where the party requesting that LUBA take official notice of a planning map fails to establish that the map is the kind of “enactment” that is subject to official notice, LUBA will not take official notice. *Friends of Eugene v. City of Eugene*, 44 Or LUBA 239 (2003).

27.14 LUBA Procedures/Rules – Official Notice. Federal census population figures and other data and petitioner’s analysis of that data, offered to support petitioner’s interpretation of an administrative rule, are not law that may be judicially recognized under Oregon Evidence Code 202, or material that may be considered in interpreting a statute or rule under the methodology described in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). *Beaver State Sand and Gravel v. Douglas County*, 43 Or LUBA 140 (2002).

27.14 LUBA Procedures/Rules – Official Notice. The Board will not reject an untimely and potentially prejudicial request at oral argument to take judicial notice of city legislation, where opposing parties had seven days after oral argument to respond to the request, did not request additional time, and no party demonstrated that the untimely request prejudiced the parties’ substantial rights or the Board’s ability to comply with its statutory deadlines. *Pearl District Neigh. Assoc. v. City of Portland*, 40 Or LUBA 436 (2001).

27.14 LUBA Procedures/Rules – Official Notice. LUBA may take official notice of an LCDC continuance order. *DLCD v. City of Warrenton*, 37 Or LUBA 933 (2000).

27.14 LUBA Procedures/Rules – Official Notice. A letter sent by intervenor’s attorney to the circuit court on a matter related to a decision subject to LUBA’s review is not judicially cognizable law of which LUBA can take official notice pursuant to OEC 202. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

27.14 LUBA Procedures/Rules – Official Notice. City transportation plans and maps consulted by the decision makers are not part of the record unless they were submitted into the record below, although such plans and maps may be legislative enactments of which LUBA may take official notice pursuant to OEC 202. *Volny v. City of Bend*, 36 Or LUBA 760 (1999).

27.14 LUBA Procedures/Rules – Official Notice. LUBA will grant a motion to strike documents attached to the petition for review, where those documents are neither part of the record submitted to LUBA nor documents of which LUBA may take official notice. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

27.14 LUBA Procedures/Rules – Official Notice. Soil tables produced by federal agencies are not official acts or enactments and thus judicially cognizable law subject to official notice, but rather are compilations of data beyond LUBA's authority to recognize outside the record under OEC 202. *DLCD v. Crook County*, 34 Or LUBA 243 (1998).

27.14 LUBA Procedures/Rules – Official Notice. Planning documents not placed before the city decision maker during the local proceedings are not part of the record, but LUBA may take official notice of local government enactments under OEC 202(7). *Downtown Community Assoc. v. City of Portland*, 31 Or LUBA 574 (1996).

27.14 LUBA Procedures/Rules – Official Notice. A local government decision on a quasi-judicial land use application is not an "ordinance, comprehensive plan or enactment" and, therefore, is not subject to official notice under OEC 202(7). *Rochlin v. City of Portland*, 29 Or LUBA 609 (1995).

27.14 LUBA Procedures/Rules – Official Notice. Under OEC 202, LUBA may take official notice of local government enactments. However, LUBA has no authority to take official notice of adjudicative facts or local legislative history. *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604 (1995).

27.14 LUBA Procedures/Rules – Official Notice. A document of which LUBA takes official notice does not thereby become part of the local record which may provide evidentiary support for the challenged decision. *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604 (1995).

27.14 LUBA Procedures/Rules – Official Notice. LUBA will disregard references in a petition for review to items which are neither in the record nor subject to official notice. LUBA cannot take official notice of a local government ordinance if it is not provided with a copy of the ordinance. *Craven v. Jackson County*, 29 Or LUBA 125 (1995).

27.14 LUBA Procedures/Rules – Official Notice. LUBA will disregard references in a petition for review to the legislative history of a statute, where such references are supported neither by uncontested verbatim quotes nor by submission of a copy of the legislative history documents referred to. *Craven v. Jackson County*, 29 Or LUBA 125 (1995).

27.14 LUBA Procedures/Rules – Official Notice. Where a local government has adopted, by resolution or ordinance, certain portions of a technical document, only the adopted portions of the technical document are local government enactments of which LUBA may take official notice. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 541 (1995).

27.14 LUBA Procedures/Rules – Official Notice. A complaint filed by a county in a circuit court does not constitute a local government enactment of which LUBA may take official notice as judicially cognizable law, as set out in OEC Rule 202(7). *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

27.14 LUBA Procedures/Rules – Official Notice. LUBA routinely takes official notice of local government comprehensive plans and land use regulations which establish standards applicable to appealed decisions. *McNamara v. Union County*, 28 Or LUBA 722 (1994).

27.14 LUBA Procedures/Rules – Official Notice. LUBA may take official notice of local government comprehensive plans and land use regulations under Oregon Evidence Code (OEC) Rule 202. *Jackman v. City of Tillamook*, 27 Or LUBA 704 (1994).

27.14 LUBA Procedures/Rules – Official Notice. Although LUBA is authorized to take official notice of judicially cognizable law, as set out in OEC Rule 202, LUBA does not have authority to take official notice of adjudicative facts. *ODOT v. Clackamas County*, 27 Or LUBA 141 (1994).

27.14 LUBA Procedures/Rules – Official Notice. LUBA is authorized to take official notice of judicially cognizable law, as set out in OEC Rule 202. However, a decision by a local government hearings officer on a quasi-judicial land use application is not a city or county "ordinance, comprehensive plan or enactment," subject to official notice under OEC Rule 202(7). *Testa v. Clackamas County*, 26 Or LUBA 604 (1993).

27.14 LUBA Procedures/Rules – Official Notice. LUBA may take official notice of decisions of the Oregon Supreme Court. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 821 (1993).

27.14 LUBA Procedures/Rules – Official Notice. LUBA does not have authority to take official notice of adjudicative facts. *Fleck v. Marion County*, 25 Or LUBA 745 (1993).

27.14 LUBA Procedures/Rules – Official Notice. LCDC enforcement orders are judicially cognizable law of which LUBA may take official notice. *DLCD v. Klamath County*, 24 Or LUBA 643 (1993).

27.14 LUBA Procedures/Rules – Official Notice. LUBA's review is limited by ORS 197.830(13)(a) to the record of the proceeding below, except in instances where an evidentiary hearing is authorized by ORS 197.830(13)(b). Therefore, local government enactments of which LUBA takes official notice under OEC 202 do not thereby become

part of the local record which may provide evidentiary support for the challenged decision. *Ramsey v. City of Portland*, 23 Or LUBA 291 (1992).

27.14 LUBA Procedures/Rules – Official Notice. LUBA may take official notice of state legislative or administrative history to aid in interpretation of state statutes or administrative rules. However, where such documents are not part of the local record, statements of fact in the documents cannot constitute evidentiary support for the challenged decision. *Adkins v. Heceta Water District*, 23 Or LUBA 207 (1992).

27.14 LUBA Procedures/Rules – Official Notice. LUBA lacks authority to take official notice of adjudicative facts. *Murray v. Clackamas County*, 22 Or LUBA 247 (1991).

27.14 LUBA Procedures/Rules – Official Notice. Pursuant to the legislative policy of ORS 197.805 that LUBA's decisions be made consistently with sound principles governing judicial review, LUBA has authority to take official notice of judicially cognizable law, as defined in OEC 202. OEC 202(4) authorizes LUBA to take official notice of state regulations. *Blatt v. City of Portland*, 21 Or LUBA 337 (1991).

27.14 LUBA Procedures/Rules – Official Notice. LUBA does not have authority to take official notice of adjudicative facts, as set out in OEC 201. LUBA's review is limited by ORS 197.830(13)(a) to the record of the proceeding below, except in instances where an evidentiary hearing is authorized by ORS 197.830(13)(b), and where facts outside the record are essential to determining whether LUBA has jurisdiction or whether an appeal is moot. *Blatt v. City of Portland*, 21 Or LUBA 337 (1991).

27.14 LUBA Procedures/Rules – Official Notice. Findings of fact incorporated by reference into a local government moratorium ordinance are part of the judicially cognizable law of which LUBA is authorized to take official notice. Oregon Evidence Code Rule 202(7). *Schatz v. City of Jacksonville*, 21 Or LUBA 214 (1991).

27.14 LUBA Procedures/Rules – Official Notice. LUBA cannot take official notice of local legislative history. Therefore, because LUBA's review is confined to the record of the local proceeding, LUBA cannot consider local legislative history if it is not in the record. *19th Street Project v. City of The Dalles*, 20 Or LUBA 440 (1991).