

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA is not subject to and has no authority under ORS 40.060 to 40.085, which allow courts to take judicial notice of certain “adjudicative facts” outside the court record. LUBA will, in appropriate cases, take judicial notice of laws, regulations, and official acts pursuant to ORS 40.090. *Lundeen v. City of Waldport*, LUBA No 2020-071 (May 5, 2021).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will deny a motion to take official notice of a 1978 comprehensive plan amendment taking an exception to Goals 3 and 4 to establish a rural residential area, where the amendment was later reversed and rendered ineffective by LCDC, and the movant fails to explain what relevance the reversed amendment has to an appeal of a conditional use permit for a park within the rural residential zone. *Jones v. Clackamas County*, LUBA No 2021-040 (Nov 29, 2021).

**27.14 LUBA Procedures/Rules – Official Notice.** In an appeal of a local government approval of a utility public way use permit authorizing installation of telecommunication-related facilities, LUBA will take official notice of portions of the local government’s department of public works manual under ORS 40.090(7) where the manual was adopted by a local administrative order, as authorized by the local code, and where it is a reflection of rights derived from the local code authorizing the applicant to seek a permit to place the facilities in the right-of-way. *Vaccher v. City of Eugene*, 80 Or LUBA 10 (2019).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will not take official notice of adjudicative facts contained within an officially noticed document, regardless of whether those facts may be established through reference to sources whose accuracy may not reasonably be questioned. *Shaff v. City of Medford*, 79 Or LUBA 317 (2019).

**27.14 LUBA Procedures/Rules – Official Notice.** Under ORS 40.090(2), while LUBA may take official notice of a report prepared by the United States Center for Disease Control as a public or private official act of the legislative, executive, or judicial department of the United States, it may not consider such a report to establish adjudicative facts not in the record. *Shaff v. City of Medford*, 79 Or LUBA 317 (2019).

**27.14 LUBA Procedures/Rules – Official Notice.** Under ORS 40.090(2), while LUBA may take official notice of a manual prepared by the Oregon Department of Transportation as an official act of a state agency, it may not consider such a manual to establish adjudicative facts not in the record. *Shaff v. City of Medford*, 79 Or LUBA 317 (2019).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will not take official notice of a memorandum that is addressed to the local governing body and which bears a note indicating that it was prepared for the local governing body’s consideration during a relevant proceeding, where the proponent of such official notice has not established that the memorandum is part of the local government comprehensive plan under ORS 40.090(7) and where, if the memorandum actually were before the local governing body in the proceeding, it would have been included in the record under OAR 661-010-0025(1)(b). *Shaff v. City of Medford*, 79 Or LUBA 317 (2019).

**27.14 LUBA Procedures/Rules – Official Notice.** Because the general standards for admissibility of evidence, including evidentiary thresholds for relevance and probative value, do not apply to LUBA proceedings, arguments that an ordinance updating the local code is not relevant to LUBA’s disposition of the appeal and that a DLCD notice of adoption regarding that ordinance is not probative provide no basis for denying a motion to take official notice of those documents as public law under ORS 40.090(7) and (2). *Oster v. City of Silverton*, 79 Or LUBA 1058 (2019).

**27.14 LUBA Procedures/Rules – Official Notice.** A Housing Strategy document that a city council accepts as guidance for staff is not an enactment or source of law that is subject to official notice under ORS 40.090(7). *Crowley v. City of Hood River*, 77 Or LUBA 117 (2018).

**27.14 LUBA Procedures/Rules – Official Notice.** Aerial photographs and modified printouts of zoning maps generated from an electronic database, submitted in order to support a disputed question of fact, are not official enactments of a city or a source of law that is subject to official notice under ORS 40.090(7). *Crowley v. City of Hood River*, 77 Or LUBA 117 (2018).

**27.14 LUBA Procedures/Rules – Official Notice.** Although local legislative history is generally not subject to official notice by LUBA and cannot be considered on appeal if it is not included in the local record, where the legislative history is contemporary commentary that was adopted by the city council when it adopted the legislation, LUBA will consider the commentary. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**27.14 LUBA Procedures/Rules – Official Notice.** Although LUBA may take official notice of commentary that was adopted with an ordinance, where that ordinance does not enact or amend the ambiguous zoning ordinance language at issue, it is of no significance in resolving the ambiguity. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA may take official notice of a county legal lot verification decision involving the same property at issue in an appeal of a county decision approving property line adjustments, for the limited purpose of resolving a dispute regarding LUBA’s scope of review over the county decision approving property line adjustments. *Sarett v. Lane County*, 76 Or LUBA 308 (2017).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will not take official notice of a memorandum from the assistant director of the Oregon Department of Energy (DOE) to a staff person at the Oregon Department of Land Conservation and Development (DLCD) explaining the current opinion of the DOE, because such memorandum is not an “official act” of a state executive department pursuant to ORS 40.090(2). *1000 Friends of Oregon v. Jackson County*, 76 Or LUBA 488 (2017).

**27.14 LUBA Procedures/Rules – Official Notice.** A petition for review filed in a previous appeal to LUBA that results in remand is not subject to official notice under Oregon Evidence Code (OEC) 202(7) in a subsequent LUBA appeal because it is not an “ordinance, comprehensive plan or enactment of” the city. *Graser-Lindsey v. City of Oregon City*, 74 Or LUBA 488 (2016).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA may take official notice of local government enactments, but LUBA does not have authority to take official notice of local legislative history or adjudicative facts. *Martin v. City of Central Point*, 73 Or LUBA 422 (2016).

**27.14 LUBA Procedures/Rules – Official Notice.** ORS 40.090(7) and Oregon Evidence Code 202(7) authorize official notice of city ordinances. Where a copy of an ordinance that is included in the record does not include the land use findings that were adopted to support the ordinance, but those findings were adopted as an appendix to the ordinance, LUBA will take official notice of the ordinance findings. *Graser-Lindsey v. City of Oregon City*, 72 Or LUBA 25 (2015).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will deny a motion to take official notice of a newspaper article, where the moving party cites no authority that would permit LUBA to take official notice of the newspaper article. *Graser-Lindsey v. City of Oregon City*, 72 Or LUBA 25 (2015).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA may take official notice under Oregon Evidence Code 202(2) of a Program Level Biological Assessment prepared by the Federal Emergency Management Agency (FEMA). *Hess v. City of Corvallis*, 70 Or LUBA 283 (2014).

**27.14 LUBA Procedures/Rules – Official Notice.** Under Oregon Evidence Code 202(7) LUBA may take official notice of “[a]n ordinance, comprehensive plan or enactment of any county or incorporated city in this state,” as well as findings and maps incorporated by reference into the ordinance if those findings and maps are provided to LUBA. *Root v. Klamath County*, 63 Or LUBA 230 (2011).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA’s authority to take official notice of a local government’s ordinance does not extend to notice of evidence, if notice of that evidence is requested to resolve factual disputes, because LUBA’s review is limited to the evidentiary record. *Root v. Klamath County*, 63 Or LUBA 230 (2011).

**27.14 LUBA Procedures/Rules – Official Notice.** Under OEC 202(7) and ORS 40.090(7), LUBA may take official notice of a city “ordinance, comprehensive plan, or enactment.” Where a party asks that LUBA take official notice of minutes that show the city accepted an ad hoc committee report and the report itself, even assuming the minutes and ad hoc committee report constitute city enactments, LUBA will deny that request where the party asks LUBA to take official notice of those documents for their evidentiary value. *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010).

**27.14 LUBA Procedures/Rules – Official Notice.** Where a party asks LUBA to take official notice of documents that appear to be drafts of early versions of Goal 4 (Forest Lands), suggested text revisions, and minutes of Land Conservation and Development Commission meetings where Goal 4 revisions were considered, but the party does not attempt to authenticate those documents, LUBA will nevertheless take official notice of those documents where opposing parties offer no reason to believe the documents are not what they appear to be. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will not take official notice of what appears to be a Department of Land Conservation and Development internal memorandum discussing the history, interpretation and proper application of Goal 4, as legislative history of the adoption and amendment of Goal 4 and the Goal 4 administrative rule, where the party asking LUBA to take official notice does not establish that the memorandum was part of any Land Conservation and Development Commission deliberations concerning the adoption of or amendments to Goal 4 or the Goal 4 administrative rule. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

**27.14 LUBA Procedures/Rules – Official Notice.** Under Oregon Evidence Code (OEC) 202(2), LUBA may take official notice of a Remand Order issued by the Land Conservation and Development Department. *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 211 (2010).

**27.14 LUBA Procedures/Rules – Official Notice.** Where the petitioner requests that LUBA consider extra-record evidence in the form of a sign-up sheet that includes the city’s rules for hearings, to support allegations that the city failed to abide by those rules, LUBA will take official notice of the city rules because they were adopted by resolution. However, LUBA will deny the motion with respect to extra-record copies of the sign-up sheet that were signed by participants in the proceeding below, where the petitioner fails to demonstrate how LUBA’s consideration of the signed sheets would affect the outcome of the review proceeding. *Claus v. City of Sherwood*, 61 Or LUBA 520 (2010).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will take official notice of the decisional law and official acts of federal agencies, including a Federal Aviation Administration (FAA) Airport Compliance Handbook and documents from an FAA enforcement proceeding. *Port of St. Helens v. City of Scappoose*, 58 Or LUBA 122 (2008).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will take official notice under OEC 202(2) of an Oregon Water Resources Department Order that modifies a water rights permit, because it is the official act of a state executive agency that establishes the law that governs access to and distribution of groundwater. *Pete’s Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA may not take official notice of facts within documents that are otherwise subject to notice under Oregon Evidence Code 202, if notice of those facts is requested for an adjudicative purpose, that is, to provide evidentiary support or countervailing evidence with respect to an approval criterion at issue in the challenged decision. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688 (2007).

**27.14 LUBA Procedures/Rules – Official Notice.** Municipal wastewater permits issued by the Oregon Department of Environmental Quality are “official acts” of an executive agency and thus potentially subject to official notice under Oregon Evidence Code 202(2). *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688 (2007).

**27.14 LUBA Procedures/Rules – Official Notice.** LUBA will not take official notice of an Oregon Department of Justice order denying a public records request, where the only reason the movant requests that LUBA consider the order is to establish an adjudicative fact, that is, that certain documents that the movant believes must exist in order to support the challenged decision in fact do not exist. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688 (2007).

**27.14 LUBA Procedures/Rules – Official Notice.** Because the legislative commentary to Oregon Evidence Code 202(2) indicates that the scope of “official acts” subject to official notice is not limited to generally applicable laws, rules and regulations, non-binding guidelines for issuing permits adopted by the Oregon Department of Environmental Quality are subject to official notice. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688 (2007).

**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).