

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. LUBA will deny a request to resettle the record and restart the deadline for filing the petition for review that is filed on the date the petition for review is due and that is based on a nonmeritorious argument that notes taken by a recording clerk are “minutes” of the proceeding that must be included in the record. *Ford v. Jackson County*, 54 Or LUBA 434 (2007).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. Under OAR 661-010-0065(4), LUBA may extend the deadline for filing the petition for review on its own motion without the written consent of all parties, where the extension is required to avoid prejudice to one or more party’s substantial rights due to LUBA’s failure to contemporaneously advise the parties that the record had been received. *Confederated Tribes v. Jefferson County*, 42 Or LUBA 597.

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. Where petitioner’s attorney files a record objection, but LUBA fails to send a copy of its order settling the record to petitioner’s attorney or otherwise provide notice of the briefing schedule determined in that order, the Board will amend its order settling the record to establish a new briefing schedule. *Wittke v. City of Milwaukie*, 41 Or LUBA 613 (2002).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. A LUBA staff misstatement concerning the correct date the record was settled by an order of the Board does not affect the date the record was settled. Parties who rely on LUBA staff to determine the date the record is settled rather than make that determination themselves by referring to the order on record objections assume the risk of such reliance. *North Park Annex v. City of Independence*, 35 Or LUBA 512 (1999).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. Although a record is always "accepted" upon delivery, in that it is date-stamped and filed by LUBA's staff, it is not fully "accepted" for purposes of OAR 661-10-025(4)(a) as to form or content until it is either received by the Board, when there is no objection, or "settled" by the Board pursuant to OAR 661-10-026(6), when there is some objection. *Mar-Dene Corporation v. City of Woodburn*, 32 Or LUBA 481 (1997).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. Where a local government submits a supplemental record while LUBA is in the process of resolving objections to the original record, a party may not reserve its objections to the supplemental record until after LUBA issues an order resolving the objections to the original record. LUBA's rules require that an objection to a supplemental record be filed no later than 10 days after the objecting party receives the supplemental record. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. An allegation that an intervenor failed to appear in the proceedings below cannot be resolved until the content of the record of the proceedings below is known. Therefore, a motion to deny intervention based on a failure to appear below, which is filed prior to the settling of the local record, is not untimely. *Terra v. City of Newport*, 24 Or LUBA 579 (1992).