

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. Where the local government proposes to remove, replace, or repaginate a significant number of documents in an original electronic record, rather than requiring the local government to submit a supplemental record, LUBA will require the local government to submit a new electronic record and a new table of contents that incorporates all of the proposed insertions, deletions, and replacements, as well as consistent pagination, and that completely replaces the original record. *Curl v. City of Bend*, LUBA No 2020-130 (Jan 29, 2021).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. Where a local government moves to dismiss an appeal after record objections have been filed, LUBA will suspend all deadlines in the appeal, including its own deadline to resolve the record objections, until it rules on the motion to dismiss. *Leyden v. City of Eugene*, 79 Or LUBA 1054 (2019).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. When the county submits pre-decision documentation to DLCDC in accordance with ORS 197.610(1) which requires local governments to provide information specified in ORS 197.610(3), including a copy of proposed amendments to DLCDC, that material is properly included in the record. Also, when the county submits the post-decisional notice and information required by ORS 197.615(1) and (2), the county must either identify their location in the present record or submit them as part of a supplemental record. Additionally, if DLCDC sent the county a substantive response to the information the county sent to DLCDC, the response should be included in the record. *VanDyke v. Yamhill County*, 78 Or LUBA 1036 (2018).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. Nothing in LUBA's rules authorizes a party to file a series of new or expanded objections to the record after the 14-day period for filing record objections closes. That the local government files a supplemental record does not open the door for any party to file new or expanded objections to the original record. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. In a motion to take evidence outside the record filed before the parties have submitted briefs, LUBA considers it axiomatic that a document rejected from the local record is not part of the local record, for purposes of settling the content of the record, even if LUBA later concludes, after briefing on the merits, that the document was erroneously rejected from the local record. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. LUBA will treat as a belated supplemental record a document attached to the local government's response brief, where there is no dispute that the document was inadvertently omitted from the record transmitted to LUBA, the petition for review assumed the document was in the record, and accepting the belated supplemental record neither prejudices a party's substantial rights nor delays LUBA's review proceeding. *Save Downtown Canby v. City of Canby*, 70 Or LUBA 68 (2014).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. A motion to reconsider an order on record objections is not appropriate when the motion: (1) attempts to raise new objections to the record; (2) repeats arguments made in the original objections; or (3) provides new arguments

that could have been advanced in the original objections. *Smith v. City of Salem*, 60 Or LUBA 478 (2010).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. A motion to reconsider an order on record objections may be appropriate when the motion argues that LUBA’s order was based on a significant misunderstanding of the parties’ arguments regarding the record and the party seeking reconsideration files a timely request to reconsider that succinctly identifies and clarifies the alleged misunderstanding. *Smith v. City of Salem*, 60 Or LUBA 478 (2010).

27.3.4 LUBA Procedures/Rules – Record – Settling the Record. Under OAR 661-010-0026(6), after a record objection is filed, the time limits for all further procedures remain suspended until LUBA issues an order settling the record, even if the local government transmits a supplemental record to the parties that purports to resolve some or all of the record objections. *Welch v. Yamhill County*, 55 Or LUBA 697 (2007).

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 (2002).

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).