

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. An argument in an intervenor-respondent’s brief that the challenged decision must be reversed based on alleged error is, in essence, an assignment of error or cross-assignment of error. However, LUBA will decline to address such arguments where intervenor-respondent fails to demonstrate that the issues raised under such arguments were raised during the proceedings below. *Krishchenko v. City of Canby*, 52 Or LUBA 290 (2006).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. Read in context, the ORS 197.830(2) requirement that a person must file a notice of intent to appeal in order to “petition [LUBA] for review” does not implicitly prohibit parties who have not filed a notice of intent to appeal from filing a cross-petition for review, as provided by OAR 661-010-0030(7). *Horning v. Washington County*, 51 Or LUBA 303 (2006).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. An intervenor-respondent may raise cross assignments of error in the response brief, but LUBA will only address those cross assignments of error if one or more of the petitioner’s assignments of error are sustained and the decision is otherwise subject to reversal or remand. *Dauenhauer v. Jackson County*, 51 Or LUBA 539 (2006).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. When an intervenor-respondent raises cross-assignments of error in a response brief rather than assignments of error in a cross petition, LUBA will only address the cross-assignments of error if the challenged decision is reversed or remanded on any of the petitioner’s assignments of error. *Young v. Jackson County*, 49 Or LUBA 327 (2005).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. Because nothing in LUBA’s rules prohibits including a cross-assignment of error in the response brief, LUBA rules governing response briefs contemplate inclusion of “other matters” in the response brief, and many cross-assignments of error cannot practicably be advanced except in the response brief, it is consistent with LUBA rules to include a cross-assignment of error in a response brief. *Copeland Sand & Gravel, Inc. v. Jackson County*, 46 Or LUBA 653 (2004).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. LUBA will not reach the merits of a cross-petition where cross-petitioners have joined in a motion to dismiss an appeal and the appeal must be dismissed because the petition for review was not timely filed. *Ballou v. Douglas County*, 40 Or LUBA 377 (2001).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. New objections to the applicability of an identified approval criterion should be raised in a cross-petition for review, and are not properly presented in a response brief. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. Arguments that the county should have based its decision on the subject application on statutory

provisions, rather than on compliance with local standards, must be presented in a petition for review or cross-petition for review. Such arguments are not properly presented in a respondent's brief. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. A respondent or intervenor-respondent who wishes to challenge some aspect of an appealed decision must file either a cross-petition for review or a separate appeal. LUBA will not consider assignments of error included in a respondent's brief. *Spathas v. City of Portland*, 28 Or LUBA 351 (1994).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. A respondent or intervenor-respondent wishing to challenge some aspect of a land use decision in a LUBA appeal must either file a timely cross-petition for review or file a separate appeal. Cross assignments of error may not be included in a respondent's brief. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. Where a county failed to interpret ORS 215.213(2)(d)(C) as allowing an aggregate processing facility that conducts part of the processing on-site but completes the process of making aggregate into asphalt or portland cement off-site, and the party wishing to assign the county's interpretive failure as error did not appeal the county's decision to LUBA or file a cross-petition for review, LUBA will not consider the interpretive question. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition. Where an applicant neither files its own appeal of the local governing body's decision granting the requested development approval nor files a cross-petition for review in the LUBA appeal filed by the opponents, the question of whether a local appeal by the opponents should have been dismissed by the governing body is not properly presented to LUBA. *Miller v. Washington County*, 25 Or LUBA 169 (1993).