

**27.3.1 LUBA Procedures/Rules – Record – Generally.** 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).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where minutes or media recordings have already been prepared, a local government must include them in the record even if the local government was not legally required to prepare them in the first place. *Settlemier v. City of Albany*, LUBA No 2020-106 (Feb 9, 2021).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Materials generated during earlier proceedings, including planning commission hearings, are not part of the record under OAR 661-010-0026(2)(b) unless they were placed before the final decision maker. The mere availability of such materials on a local government’s website, without an express indication that they were made part of the record for the decision, is insufficient to establish that they were placed before the final decision maker. *Towey v. City of Hood River*, LUBA No 2021-057 (Sept 8, 2021).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Materials such as newspaper articles, radio spots, social media posts, and newsletters that provide general information about a legislative project, but are not issued as formal notices of proposed action, public hearing, or final decision pursuant to applicable code provisions or ORS 197.610, are not “notices” for purposes of OAR 661-010-0025(1)(d) and are not properly included in the local record where they were not placed before the final decision maker. *Towey v. City of Hood River*, LUBA No 2021-057 (Sept 8, 2021).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** When the county submits pre-decision documentation to DLCD 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 DLCD, 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 DLCD sent the county a substantive response to the information the county sent to DLCD, the response should be included in the record. *VanDyke v. Yamhill County*, 78 Or LUBA 1036 (2018).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where one of the bases for a party’s motion to consider evidence outside the record is to resolve disputes over the content of the record pursuant to OAR 661-010-0045(1), such disputes arise and ripen before briefing on the merits, and therefore such motions may be filed prior to the briefing for that purpose. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** To succeed in a motion to take evidence outside the record and pursuant to OAR 661-010-0045(1), and (2)(a) and (c), regarding an alleged violation of petitioners’ rights under the privileges and immunities clause of the Oregon

Constitution, and the equal protection clause of the 14th Amendment to the United States Constitution, the movant must develop a legal theory and a set of factual assertions sufficient to allow LUBA to determine how consideration of the proffered evidence would “affect the outcome of the review proceeding.” *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** In a motion to take evidence outside the record pursuant to OAR 661-010-0045(1), and (2)(a) and (c), petitioners’ argument—that two city employees violated petitioners’ rights under the privileges and immunities clause of the Oregon Constitution, and the equal protection clause of the 14th Amendment to the United States Constitution because the employees engaged in the “unequal” application of the applicable standards in processing two similarly situated planned unit development (PUD) projects—fails to demonstrate that the proffered evidence would concern “procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision” because petitioners do not allege that the final decision maker violated petitioners’ constitutional rights. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Under OAR 661-010-0025(1)(a) a local government may clarify its understanding of all the documents a final decision maker adopted as supporting findings, by collecting all those adopted findings together at the beginning of the record. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** While LUBA and other public bodies have a statutory obligation to protect confidential archeological information in the record from public disclosure, LUBA lacks statutory authority to order private parties to the appeal to keep confidential information in their private possession from public disclosure. *Oregon Shores Conservation Coalition v. Coos County*, 75 Or LUBA 534 (2017).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA will deny a request for a 90-day extension of the deadline to transmit the record, and conclude that granting the requested extension would be inconsistent with the legislative objective that “time is of the essence in reaching final decisions in matters involving land use,” given (1) the petitioners’ objection to the extension, (2) the probable brevity of the record, and (3) the petitioners’ offer to assist the county in preparing the record. *Agnew v. Josephine County*, 75 Or LUBA 556 (2017).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A single e-mail to the county discussing the omission of one document from the record is sufficient to satisfy the OAR 661-010-0026(1) obligation to attempt to resolve record objections with the local government’s legal counsel prior to filing an objection with LUBA with respect to the identified document, but not with respect to other allegedly omitted documents. *Neil v. Columbia County*, 74 Or LUBA 614 (2016).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA will consider a reply to a response to record objections, where the reply is limited to legal arguments raised in the response to the objections, and does not state additional record objections. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 638 (2016).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where a party objects that the record should include a transcript, attaches the transcript to its record objections and the county thereafter submits a copy of the transcript as a supplemental record, and that transcript has formatting errors that complicate use of the transcript but do not render it unusable, LUBA will deny the party’s objection that the county should be ordered to submit the transcript a second time without the formatting errors. *Rawson v. Hood River County*, 74 Or LUBA 668 (2016).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA interprets OAR 661-010-0025(2)(a) and 661-010-0025(4)(a)(B) to require that all record documents that are retained by the local government until oral argument must be identified on a list at the end of the table of contents. This requirement applies, even if reduced copies of oversized originals or black and white copies of retained color originals are included and indexed in the record that is transmitted to LUBA. *Fernandez v. City of Portland*, 72 Or LUBA 482 (2015).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** OAR 661-010-0025(4)(a)(B)(i) provides in part that “[w]here an item listed in the table of contents includes attached exhibits, the exhibits shall be separately listed as an exhibit to the item.” As a general rule, OAR 661-010-0025(4)(a)(B)(i) does not require that exhibits to exhibits must be separately listed in the table of contents. *Fernandez v. City of Portland*, 72 Or LUBA 482 (2015).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** OAR 661-010-0025(4)(a)(B)(i) provides in part that “[w]here an item listed in the table of contents includes attached exhibits, the exhibits shall be separately listed as an exhibit to the item.” Where a record table of contents does not separately list the attachments to a document that is included in the record and identified in the table of contents, but the record table of contents includes a specific or general description of all the attachments, any failure to fully comply with OAR 661-010-0025(4)(a)(B)(i) is not a basis for ordering that the table of contents be revised to separately list the attachments. *Fernandez v. City of Portland*, 72 Or LUBA 482 (2015).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Including hyperlinks in a document that is submitted for the record in a quasi-judicial land use proceeding is not sufficient, without more, to make the documents that can be accessed via those hyperlinks part of the local government’s record. *Fernandez v. City of Portland*, 72 Or LUBA 482 (2015).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where a record is transmitted to LUBA in electronic instead of paper format, and the records exceeds 100 pages, the electronic copy of the record must be in the form of a searchable PDF, so that terms and phrases can be easily located. *Rogue Advocates v. Josephine County*, 71 Or LUBA 409 (2015).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** 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).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A supplemental traffic impact analysis is included in the local record where it (1) was submitted to city staff to supplement a land use permit application, (2) was submitted in the same way that many documents in the record were submitted, (3) was available to all parties and city council throughout the proceedings, and (4) is referred to in a number of documents in the record and the findings adopted to support the decision. *Zian Limited Partnership v. City of Tualatin*, 68 Or LUBA 560 (2013).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** OAR 661-010-0025(1) is not exhaustive in its listing of the contents of the record, because it provides “the record shall include at least the following[.]” *Save Downtown Canby v. City of Canby*, 67 Or LUBA 480 (2013).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Paper or media copies of visual presentations by planning staff to the land use decision maker are properly included in the record that is transmitted to LUBA, even if media or paper copies of that visual presentation were not presented for the record below. *Save Downtown Canby v. City of Canby*, 67 Or LUBA 480 (2013).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** In determining whether a document was placed before a planning director and therefore part of the record of a planning director’s land use decision, documents that were placed before the planning director or a designee in one land use proceeding, but were not separately placed before the planning director or a designee in a second, albeit related land use proceeding are not part of the record of the second related proceeding. *Schnitzer Steel Industries, Inc. v. City of Eugene*, 67 Or LUBA 484 (2013)

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where three appeals filed by two parties are consolidated together, the local government is required to serve one copy of the record to each of the two petitioners, and is not required to provide two copies to the petitioner who filed two appeals. The number of copies served is based on the parties, not the number of appeals. *STOP, LLC v. City of West Linn*, 67 Or LUBA 494 (2013).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Notwithstanding OAR 661-010-0025(1), which requires that all “documents or other written materials” that are placed before the decision maker must be included in the record, a local government’s consideration of a land use regulation in adopting a land use decision does not, by itself, require that the land use regulation be included as part of the record that must be submitted in a LUBA appeal, unless there is some reason to believe the local government intended to make a copy of the land use regulation part of the record of the local government’s proceedings. However, LUBA routinely takes official notice of comprehensive plans and land use regulations under ORS 40.090(7) and OEC 202(7). *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 452 (2012).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A statement in a city council decision that adopts amendments to city septic system regulations that in considering the amendments the city council considered original septic system regulations is not sufficient to incorporate the legislative record of the original septic system regulations as part of the record of the amended septic system regulations. *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 452 (2012).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where a local government has already served the petitioners with a copy of the record during a previous LUBA appeal, in an appeal of the local government’s decision following LUBA’s remand in that first appeal, the local government is not required to serve on petitioners a second copy of the record it compiled in rendering the initial decision. *Sane, Orderly Development, Inc. v. Douglas County*, 63 Or LUBA 578 (2011).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Just as a local government errs by refusing to accept relevant evidence, a local government errs if it accepts relevant evidence that is submitted in accordance with local law and then fails to provide that relevant evidence to the local decision maker. *Montgomery v. City of Dunes City*, 60 Or LUBA 274 (2010).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** The OAR 661-010-0026(2) authorization for precautionary record objections was adopted to encourage collaborative resolution of record problems which can eliminate the possibility that LUBA will erroneously resolve complicated record objections or resolve them in a way that will have unintended consequences or complicates resolution of an appeal on the merits. *Hoffman v. Deschutes County*, 60 Or LUBA 451 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** ORS 661-010-0025(1)(b) requires that the record that a local government transmits to LUBA must include “[a]ll written testimony and all exhibits, maps, documents or other written materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.” However, where a city’s land use code provides that “[t]he record shall contain all testimony and evidence that is submitted to the City, the Planning Commission, and the City Council and not rejected,” testimony and evidence that is submitted to city planning staff must be included in the record, even if it was never actually placed before the city council, which was the final decision maker. *Montgomery v. City of Dunes City*, 59 Or LUBA 519 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where a local government land use code requires that “testimony and evidence” that is transmitted to city planning staff must be included in the record, even if that testimony and evidence was never placed before the ultimate city decision maker, e-mail messages that were sent to planning staff need not be included in the record where the objecting party does not establish that the disputed e-mail messages constitute “testimony and evidence.” *Montgomery v. City of Dunes City*, 59 Or LUBA 519 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Local governments that seek additional time to compile and transmit the record to LUBA should contact the other parties and advise LUBA whether any party objects to the requested extension of time. *Catholic Diocese of Baker v. Crook County*, 59 Or LUBA 530 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Local governments that seek additional time to compile and file the record should advise LUBA of the expected length of the record and any other factors that might have some bearing on the reasonableness of the requested extension of time. *Catholic Diocese of Baker v. Crook County*, 59 Or LUBA 530 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Parties that object to requests for extensions of time to compile and transmit the record should provide relevant information that will allow LUBA to determine the reasonableness of their objections. *Catholic Diocese of Baker v. Crook County*, 59 Or LUBA 530 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Parties that object to requests for extensions of time to compile and transmit the record will improve their chances of prevailing if they suggest ways to shorten or simplify the record or offer to assist the local government in compiling and transmitting the record. *Catholic Diocese of Baker v. Crook County*, 59 Or LUBA 530 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A city may decide that the record of its legislative land use proceeding began when notice was given of the hearing before the planning commission, and does not include earlier scoping and prioritizing proceedings, where that decision is consistent with local law. Such a decision is within any implied limits imposed by ORS 197.830(10)(a) and OAR 661-010-0025(1). *Home Builders Association v. City of Eugene*, 58 Or LUBA 688 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Documents that were placed before the city council during a scoping and prioritizing stage that predated the commencement of a city legislative land use proceeding need not be included in the record that is filed with LUBA. *Home Builders Association v. City of Eugene*, 58 Or LUBA 688 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Simply making documents available on a local government’s website does not make them part of the record of a legislative land use proceeding. However, where the local government expresses an intent that specified documents that are available on the city’s website should be considered by the decision makers and parties to be part of the record, the fact that the city only provides paper copies of selected website documents to the local decision makers does not mean that the other website documents are not also part of the record. *Graser-Lindsey v. City of Oregon City*, 58 Or LUBA 703 (2009).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Notes taken by the recording clerk at a hearing conducted by a hearings officer are not “minutes” of the hearing for purposes of the OAR 661-010-0025(1)(c) requirement to include minutes of the local proceedings in the record. *Ford v. Jackson County*, 54 Or LUBA 434 (2007).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA’s scope of review is not limited to the local government record under ORS 197.835(2)(a) when LUBA is considering whether the decision on appeal is a land use decision that is subject to LUBA review. Making that threshold jurisdictional inquiry does not entail “[r]eview of the decision,” within the meaning of ORS 197.835(2)(a). *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** OAR 661-010-0025(2), which allows local governments to “retain any large maps, tapes, or difficult-to-duplicate documents and items until the date of oral argument,” attempts to strike a balance between the parties’ need to have easy and convenient access to the record to prepare their briefs and the difficult and costly burden a

local government may face in making the required number of copies of a record that includes documents that for some reason cannot be duplicated or cannot easily be duplicated using standard office copying equipment. *Walker v. Deschutes County*, 54 Or LUBA 752 (2007).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Although OAR 661-010-0025(1)(b) allows a local government to incorporate documents into the record, even though those documents are not physically placed before the local government in a land use proceeding, the local government must actually incorporate such documents. Acknowledging that a party has requested that a document be incorporated as part of the record is not the same thing as granting that request. *Rhinhart v. Umatilla County*, 53 Or LUBA 601 (2006).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Proceedings after remand from LUBA are a continuation of the original proceedings. Therefore, if the local government has already served the petitioners with a copy of the record from the previous LUBA appeal, the general rule is that the local government is not required to re-serve the petitioners with another copy of the previous LUBA record. *Foland v. Jackson County*, 53 Or LUBA 629 (2007).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA will make an exception to the general rule that a local government does not need to re-serve petitioners with a copy of the previous LUBA record when the local government already served those petitioners a copy of the previous LUBA appeal, when the decision on remand was made more than 10 years after LUBA remanded the local government’s decision. *Foland v. Jackson County*, 53 Or LUBA 629 (2007).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where a motion to take evidence is filed regarding an outstanding record objection and the content of the local record, the motion will be denied as moot where the motion and pleadings provide sufficient information to determine the content of the record. *Rickreall Community Water Assoc. v. Polk County*, 52 Or LUBA 772 (2006).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Under OAR 661-010-0026(1), before filing a record objection, a party is required to consult with the governing body’s legal counsel. Where a party does so and the local government thereafter submits a supplemental record three days after the 14-day deadline for filing record objections expires, the party’s failure to file a record objection provides no basis for rejecting the supplemental record. *Jaffer v. City of Monmouth*, 51 Or LUBA 803 (2006).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** While mere reference to a document in testimony is an insufficient basis to conclude that the referenced document is incorporated into the record, where the decision itself refers to a document in a manner that suggests the document was considered by the decision maker, absent some reason to conclude otherwise the document is part of the record. *Tualatin Riverkeepers v. ODEQ*, 51 Or LUBA 826 (2006).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where the challenged decision refers to and requires specific changes to existing storm water management manuals, that is some indication that the decision maker reviewed those manuals, and the burden shifts to the respondent to substantiate its assertion that the manuals were not in fact before the decision maker. *Tualatin Riverkeepers v. ODEQ*, 51 Or LUBA 826 (2006).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Documents may be incorporated into a land use decision only if the decision maker clearly indicates the intent to do so and adequately identifies the document incorporated. Statements that a stormwater permit includes “best management practices” does not mean that documents described under federal regulations as “best management practices” are incorporated into the permit. *Tualatin Riverkeepers v. ODEQ*, 51 Or LUBA 826 (2006).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where the record was mailed to and received by petitioner and LUBA, the deadline for filing the petition for review expires 21 days after the record is received by LUBA, and petitioner’s claim that he did not receive a letter from LUBA advising him of the date LUBA received the record does not affect that deadline. *Cunningham v. Josephine County*, 50 Or LUBA 58 (2005).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA will not summarily deny record objections based on the objectors’ failure to first consult with the local government’s counsel under OAR 661-010-0026(1), where although it appeared that one of the objecting parties consciously violated the consultation requirement, it was not clear that another of the objecting parties was aware of the consultation requirement, and the county had already caused a 77-day delay by filing the record late. *Lindsey v. Josephine County*, 50 Or LUBA 756 (2005).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where LUBA can understand a party’s presentation and arguments, the local government’s failure to provide oversized exhibits for use at oral argument does not prejudice the party’s substantial rights. *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where the final decision maker dictates that the city will accept additional written submissions only until a prescribed date, and city staff acts under that dictate to reject a document submitted after the prescribed date, the final decision maker has “rejected” the document, for purposes of determining the content of the record. *Kane v. City of Beaverton*, 49 Or LUBA 712 (2005).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where a local government conducts a single combined hearing on two separate permit applications, documents that clearly relate to only one application are not part of the record of the other application. *Kane v. City of Beaverton*, 49 Or LUBA 712 (2005).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where the evidentiary record has closed and a local appeal to the city council is limited to the evidentiary record that was compiled before the initial local hearings body, an attorney’s reference to a deed to “illustrate” his argument to the city council is not sufficient to place the deed before the decision maker, so that it would become part of the city’s record under OAR 661-010-0025(1)(b). *Nash v. City of Medford*, (2004).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Although the local government record may be necessary to determine whether a city improperly failed to follow applicable procedures in issuing a building permit, the local record may not be needed to determine whether LUBA has

jurisdiction to consider an appeal challenging that building permit. Where the local government moves to dismiss the appeal contending that LUBA lacks jurisdiction to review the building permit and petitioner makes no attempt to explain why the record is necessary to determine whether that building permit is a land use decision or limited land use decision, LUBA will not require that the local government file the record until after LUBA rules on the jurisdictional question. *Wetzel v. City of Eugene*, 47 Or LUBA 631 (2004).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** 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).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA’s rules do not specify whether the copy of the record that local governments are required to file and serve must be paper copies. Where petitioner does not contend that he is unable to access a part of the record that is provided in electronic format only or that the electronic format of part of the record hampers his ability to prepare for the appeal, LUBA will allow a record that is provided, in part, on a compact disk. *Ramsey v. Multnomah County*, 44 Or LUBA 828 (2003).

**27. 3.1 LUBA Procedures/Rules – Record – Generally.** A city’s motion to extend the time for filing the record pending LUBA’s resolution of its motion to dismiss for lack of jurisdiction will be denied, where LUBA determines that the city’s record is necessary to resolve the jurisdictional question. *Dean v. City of Springfield*, 43 Or LUBA 632 (2002).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where a local government concedes that documents identified by petitioners are properly included in the record, LUBA will require that the city submit a supplemental record to include the documents. Petitioners may not submit a supplemental record; only the respondent may submit the record in a LUBA appeal. *Tirumali v. City of Portland*, 40 Or LUBA 565 (2001).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Mail service of the notice of intent to appeal is complete on deposit in the mail. That the county did not receive the notice does not waive its obligation to file the record with LUBA, particularly when it had actual knowledge that the notice had been filed with LUBA. *Petersen v. Columbia County*, 39 Or LUBA 799 (2001).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A lengthy delay in filing the local record with LUBA does not substantially prejudice petitioner’s right to the speediest practicable review, where the delay was partially attributable to petitioner’s failure to bring the local government’s noncompliance to LUBA’s attention. *Petersen v. Columbia County*, 39 Or LUBA 799 (2001).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA may consider evidence outside of the local record for the limited purpose of determining whether it has jurisdiction without the necessity of granting motions to take evidence outside of the record. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Under OAR 661-010-0025(4)(b) the record in a LUBA appeal may be incorporated by reference in the record of a subsequent LUBA appeal. However, where this is done, any parties in the subsequent LUBA appeal who did not receive a copy of the record in the first LUBA appeal must be provided a copy of that record. *Waibel v. Crook County*, 39 Or LUBA 749 (2000).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA will consider documents that are not included in the record in deciding whether an appeal is moot. *Willhoft v. City of Gold Beach*, 39 Or LUBA 743 (2000).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA will deny a motion to consider evidence that is not included in the record, where the moving party fails to demonstrate that any of the criteria for granting such a motion under OAR 661-010-0045(1) are met and the evidence the moving party seeks to have included does not render the appeal moot. *Dept. of Transportation v. City of Eugene*, 38 Or LUBA 814 (2000).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A county attorney’s decision to forward certain letters from petitioners’ attorney to the county attorney to the board of county commissioners is not sufficient to establish either a common practice that all letters to the county attorney are included in the record or a reasonable expectation on the part of petitioners’ attorney that such letters would be included in the local record. *Western States v. Multnomah County*, 37 Or LUBA 987 (1999).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Petitioners’ attorney’s letter to the county’s attorney is properly excluded from the record where the letter is not submitted for the record in the manner specified in the notice of hearing, and the letter does not include a request that the letter be included in the record. *Western States v. Multnomah County*, 37 Or LUBA 987 (1999).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A motion to supplement the record filed after the petition for review and respondent’s brief have been filed will be denied where it is not clear whether the document to be added to the record was placed before the decision maker, and no “unique circumstances” are identified to warrant supplementing the record at such a late state of the appeal. *Root v. City of Medford*, 36 Or LUBA 778 (1999).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** LUBA will reject a supplemental record submitted after the petition for review has been filed, where the city fails to explain why the material in the supplemental record is properly part of the local record, and fails to establish that any “unique circumstances” exist justifying untimely filing of the supplemental record. *Terra v. City of Newport*, 36 Or LUBA 754 (1999).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** 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).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** In addressing a substantial evidence challenge, where the response brief provides no transcripts or partial transcripts and provides no assistance in locating the portion of the audio tapes in the record where relevant testimony is located, LUBA will not search for testimony on audio tapes. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Under OAR 661-010-0025(2) and (3), a local government is not required to include copies of audiotapes with the record served on petitioner. The local government is only required to make the tapes available to petitioner for copy or transcription at petitioner’s expense. *Beaman v. City of Hillsboro*, 34 Or LUBA 779 (1998).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A local government is not required to include a verbatim transcript of tape recordings in the record if such a transcript was not actually prepared for the proceedings below. *Beaman v. City of Hillsboro*, 34 Or LUBA 779 (1998).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** In deciding jurisdictional challenges, LUBA will consider material attached to the parties’ briefs if no party objects. If a party does object, the appropriate means to introduce evidence from outside the record is through a motion for an evidentiary hearing. *Mazeski v. Wasco County*, 31 Or LUBA 126 (1996).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A request to supplement the local government record made at the time of oral argument is untimely and will be denied. *Lyon v. Linn County*, 28 Or LUBA 402 (1994).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** The local record must be submitted to LUBA by the local government, rather than by other parties to an appeal. OAR 660-10-025(2). *Jackman v. City of Tillamook*, 28 Or LUBA 749 (1994).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A local government may specify the methodology for making documents that are not submitted at the local hearings part of the local record in the local code, or may identify the methodology during the course of the local proceedings. *Home Builders Assoc. v. City of Portland*, 28 Or LUBA 725 (1994).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** If LUBA allows the record to be supplemented after the petition for review is filed, petitioners must be given an opportunity to file a new petition for review. *Salem Golf Club v. City of Salem*, 27 Or LUBA 715 (1994).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** In determining whether it has jurisdiction over an appeal, absent some objection from the parties, LUBA will consider materials from the record of a related LUBA appeal that are attached to parties’ briefs, as well as other material in the record of that related appeal. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** The local record consists of those items physically placed before and not specifically rejected by the local decision maker. *Forest Highlands Neigh. Assoc. v. Lake Oswego*, 23 Or LUBA 723 (1992).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** 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).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Words spoken during the proceedings before the local decision maker are considered part of the local record, even where tapes of the local proceedings are not submitted to LUBA with the local record. Transcripts of the tapes of such local proceedings may be submitted to LUBA by the parties. *Citizens for Resp. Growth v. City of Seaside*, 23 Or LUBA 100 (1992).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where respondent’s motion to dismiss for lack of jurisdiction is based solely on the legal nature of the challenged decision, and petitioner does not explain why the local government record would provide any assistance in determining the legal nature of the challenged decision, LUBA will grant respondent’s motion to delay filing the record until after the motion to dismiss is resolved. *Goose Hollow Foothills Assoc. v. City of Portland*, 21 Or LUBA 555 (1991).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Local governments may list record items which are difficult to duplicate, such as photographs, slides, maps and videotapes, as “exhibits” in the record table of contents and submit them to LUBA at the time of oral argument. Local governments are not required to serve petitioners with a copy of such items. OAR 661-10-025(2),(3) and (4)(a)(B). *Eckis v. Linn County*, 20 Or LUBA 589 (1991).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** A document appended to a party’s petition for review or brief becomes part of the record of LUBA’s proceeding. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

**27.3.1 LUBA Procedures/Rules – Record – Generally.** Where there is no dispute concerning the authenticity or identity of a document a party believes was improperly excluded from the record by the local government, the parties may stipulate that the document be included in the LUBA record for the limited purpose of reviewing the correctness of the local government’s decision to exclude the document from the local government record. Alternatively, the document may be attached to a party’s brief, and if any party objects to LUBA’s consideration of the document, the party offering the document may move for an evidentiary hearing. *Von Lubken v. Hood River County*, 19 Or LUBA 548 (1990).