

27.8 LUBA Procedures/Rules – Consolidation.

LUBA lacks jurisdiction to consolidate an active appeal with another appeal for which a final opinion and order has been issued. *Gould v. Deschutes County*, LUBA No 2019-136 (July 28, 2021).

27.8 LUBA Procedures/Rules – Consolidation. Consolidation of appeals does not permit a petitioner who is not a petitioner in both appeals to file a petition for review in the appeal in which he is not a party, and that person’s signature on a “Joint Petition for Review” does not make that person a petitioner or other party entitled to file a petition for review in the other appeal. *Willis v. Clackamas County*, 76 Or LUBA 479 (2017).

27.8 LUBA Procedures/Rules – Consolidation. LUBA will ignore incorporations of assignments of errors in other petitions for review that cause the incorporating petition to exceed the maximum page limits. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

27.8 LUBA Procedures/Rules – Consolidation. LUBA’s rules do not authorize a person who is a party in one appeal to file a motion in a different, consolidated appeal to which that person is not a party. Consolidation does not change party status. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 539 (2013).

27.8 LUBA Procedures/Rules – Consolidation. While incorporation of arguments in another brief in a consolidated appeal is a common practice, such incorporation is permissible only if it does not cause the incorporating brief to exceed the 50 page limit in OAR 661-010-0030(2)(b). Even if such an incorporation does not violate OAR 661-010-0030(2)(b), the incorporation does not allow a person who is party in one appeal to file motions in a consolidated appeal to which the person is not a party. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 539 (2013).

27.8 LUBA Procedures/Rules – Consolidation. Where LUBA consolidates two closely related decisions, LUBA will not necessarily require the local government to file a single consolidated record, where the two decisions are based on separate applications, were largely processed separately, and the content of the two records differs significantly. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 484 (2010).

27.8 LUBA Procedures/Rules – Consolidation. That two closely related decisions arising out of the same land use proceeding have different records and were filed at different times does not preclude consolidation of separate appeals of each decision, if consolidation would otherwise facilitate LUBA’s review. *Treadmill Joint Venture v. City of Eugene*, 62 Or LUBA 538 (2010).

27.8 LUBA Procedures/Rules – Consolidation. Consolidation of two closely related appeals may be appropriate even if one of the two appeals will likely be dismissed, where consolidation would otherwise facilitate LUBA’s review of both decisions. *Treadmill Joint Venture v. City of Eugene*, 62 Or LUBA 538 (2010).

27.8 LUBA Procedures/Rules – Consolidation. When three appeals have been consolidated and petitioners have filed three separate petitions for review, a respondent’s request to file a single

114-page respondent's brief responding to all three petitions for review will be allowed. *Foland v. Jackson County*, 61 Or LUBA 500 (2010).

27.8 LUBA Procedures/Rules – Consolidation. Where petitioners filed their motion to consolidate appeals one day after oral argument was held in one appeal and after the petition for review had been filed in the second appeal, consolidation would not facilitate resolution of the appeals and the motion will be denied. *Citizens for Responsible Development v. City of The Dalles*, 59 Or LUBA 369 (2009).

27.8 LUBA Procedures/Rules – Consolidation. Consolidation of separate appeals under LUBA's rules is a matter of administrative convenience for the parties and the Board, and does not affect the legal relations of the parties to each other or to the matters appealed. Consolidation of two appeals does not permit a person who is a petitioner in one appeal to file a response brief in the other appeal, absent filing a timely motion to intervene on the side of respondent in that other appeal. *Leach v. Lane County*, 45 Or LUBA 733 (2003).

27.8 LUBA Procedures/Rules – Consolidation. Where two appeals concern the same decision, but the petitioner in one appeal will raise different issues than the petitioner in the other appeal, LUBA will not consolidate the appeals or suspend the second appeal while the first appeal is suspended for settlement discussions, where LUBA will ultimately have to reach the issues that will be raised in the second appeal in any event and the parties in first appeal agree not to take any action that would moot the second appeal while it is still pending at LUBA. *Doherty v. Morrow County*, 43 Or LUBA 627 (2002).

27.8 LUBA Procedures/Rules – Consolidation. LUBA allows consolidations of appeals where consolidation facilitates review of separately appealed, closely related land use decisions. A motion to consolidate will be denied where it is uncertain whether consolidation will facilitate or complicate LUBA's review of the challenged decision. *Mountain West Investment v. City of Silverton*, 38 Or LUBA 938 (2000).

27.8 LUBA Procedures/Rules – Consolidation. Where a different, closely related decision is not separately appealed to LUBA, LUBA has no jurisdiction to conduct a consolidated review of the decision that was not appealed as part of its review of the decision that was appealed. *Jebousek v. City of Newport*, 34 Or LUBA 340 (1998).

27.8 LUBA Procedures/Rules – Consolidation. ORS 197.830(8) and OAR 661-10-015(1) and (4) require that a notice of intent to appeal be accompanied by a filing fee of 50 dollars and a deposit for costs of 150 dollars. LUBA will not refund filing fees or deposits for costs when appeals are consolidated. *Tylka v. Clackamas County*, 23 Or LUBA 715 (1992).

27.8 LUBA Procedures/Rules – Consolidation. The purpose of LUBA's rule allowing appeals of closely related land use decisions to be consolidated is to facilitate review of such decisions. A motion to consolidate appeals of closely related land use decisions will be denied where it is uncertain whether consolidation will facilitate or complicate LUBA's review of the challenged decisions. *Davenport v. City of Tigard*, 23 Or LUBA 696 (1992).