

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 COLUMBIA RIVERKEEPER and
5 1000 FRIENDS OF OREGON,
6 *Petitioners,*

7
8 vs.

9
10 COLUMBIA COUNTY,
11 *Respondent,*

12
13 and

14
15 PORT OF COLUMBIA COUNTY,
16 *Intervenor-Respondent.*

17
18 LUBA No. 2021-097

19
20 ORDER

21 **BACKGROUND**

22 Petitioners appeal a board of county commissioners ordinance approving
23 a reasons exception to Statewide Planning Goal 3 (Agricultural Lands), a
24 comprehensive plan map amendment from Agricultural Resource to Resource
25 Industrial, and a zone change from Primary Agriculture (PA-80) to Resource
26 Industrial Planned Development (RIPD) to allow for the expansion of an existing
27 port.¹

¹ This is the third time that the county has approved the challenged reasons exception, comprehensive plan map amendment, and zone change. *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171, *aff'd*, 267 Or App 637, 342

1 **MOTION TO INTERVENE**

2 Port of Columbia County, the applicant below, moves to intervene on the
3 side of the county. The motion is unopposed and allowed.

4 **RECORD OBJECTIONS**

5 On November 17, 2021, LUBA received the record in this appeal. On
6 December 3, 2021, LUBA received petitioners’ record objections. On December
7 20, 2021, LUBA received the county’s response to the record objections and an
8 amended record. On December 23, 2021, LUBA received petitioners’ reply to
9 the county’s response. On December 27, 2021, LUBA received the county’s
10 surreply to petitioners’ reply.²

11 **A. Resolved Objections**

12 Petitioners object that the record table of contents does not separately list
13 the exhibits attached to several items, as required by OAR 661-010-
14 0025(4)(B)(i). Petitioners also object that testimony and exhibits that petitioners
15 submitted on January 20, 2021, have been altered in the record and, therefore,
16 “[t]he record does not include all materials included as part of the record during

P3d 181 (2014); *Columbia Riverkeeper v. Columbia County*, 78 Or LUBA 547 (2018), *aff’d*, 297 Or App 628, 443 P3d 1184, *rev den*, 365 Or 721 (2019).

² The reply and surreply simply reiterate petitioners’ unresolved record objections and the county’s responses thereto. The Board generally does not consider serial pleadings that reiterate or supplement record objections. *See McCaffree v. City of North Bend*, 79 Or LUBA 1087, 1091-92 (2019) (LUBA generally will not consider subsequent filings that supplement timely filed record objections).

1 the proceedings before the final decision maker.” OAR 661-010-0026(2)(a). The
2 county indicates that the amended record is intended to resolve these objections.
3 Petitioners acknowledge that the amended record addresses these objections.

4 These objections are sustained and resolved.

5 **B. Unresolved Objections**

6 Generally, the record must include, among other things, “[t]he final
7 decision including any findings of fact and conclusions of law” and all “materials
8 specifically incorporated into the record or placed before, and not rejected by, the
9 final decision maker, during the course of the proceedings before the final
10 decision maker.” OAR 661-010-0025(1)(a) - (b). The challenged ordinance
11 adopts a number of exhibits as findings in support of the decision. Record 18.
12 Those documents are labeled Exhibits A to H, and they are included in the record
13 immediately after the challenged ordinance. Exhibits B, C, E, and F have
14 attachments of their own.

15 Petitioners object to the location of the attachments to Exhibits B, C, E,
16 and F immediately after the challenged ordinance because, we understand
17 petitioners to argue, the board of county commissioners did not expressly adopt
18 those attachments “as findings and conclusions in support of” the decision.
19 Record Objections 3. In support of that argument, petitioners cite *Gonzalez v.*
20 *Lane County*, 24 Or LUBA 251 (1992). *Gonzalez* concerns what constitutes the
21 findings in the challenged decision when a local government chooses to
22 incorporate all or portions of another document by reference into its findings, not

1 what constitutes the contents of the record, and it is therefore not particularly
2 helpful in resolving a dispute over the contents of the record.

3 The county responds that “the ordinance in the record is a true copy of
4 what the County adopted.” Response to Record Objections 2. We understand the
5 county to respond that the challenged attachments were actually before the board
6 of commissioners as part of the adopted ordinance.

7 Petitioners do not dispute that assertion and concede that the attachments
8 are part of the record elsewhere. Record Objections 6-7. Petitioners’ objection is
9 that the copy of the challenged ordinance in the record includes documents (as
10 attachments to exhibits) that were not specifically adopted as findings and
11 conclusions in support of the ordinance. Record Objections 3-4. Thus, petitioners
12 argue that the copy of the challenged decision as it appears in the record does not
13 accurately reflect the findings adopted by the county.

14 Record objections are allowed for the limited purpose of settling the
15 contents of the record. There is no actual dispute between the parties regarding
16 the contents of the record. Rather, there is or may be a dispute between the parties
17 about what constitutes the county’s findings in support of the decision. That
18 dispute is not the proper subject of a record objection. The attachments to
19 Exhibits B, C, E, and F are part of the record. Accordingly, this objection is
20 denied.

21 **BRIEFING SCHEDULE**

22 The record is settled as of the date of this order. The petitions for review

1 shall be due 21 days after the date of this order. The response briefs shall be due
2 42 days after the date of this order. The final opinion and order shall be due 77
3 days after the date of this order.

4 Dated this 1st day of February 2022.

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H. M. Zamudio
Board Chair