

1.6.3 Administrative Law – Substantial Evidence – Official Notice. Aerial photographs and modified printouts of zoning maps generated from an electronic database, submitted in order to support a disputed question of fact, are not official enactments of a city or a source of law that is subject to official notice under ORS 40.090(7). *Crowley v. City of Hood River*, 77 Or LUBA 117 (2018).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. LUBA will not take official notice of a memorandum from the assistant director of the Oregon Department of Energy (DOE) to a staff person at the Oregon Department of Land Conservation and Development (DLCD) explaining the current opinion of the DOE, because such memorandum is not an “official act” of a state executive department pursuant to ORS 40.090(2). *1000 Friends of Oregon v. Jackson County*, 76 Or LUBA 488 (2017).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. A circuit court opinion letter is “decisional law” for purposes of Oregon Evidence Code 202, notwithstanding that the writ of review process that yielded the opinion letter has not yet concluded in a final judgment. *J4J Miscellaneous PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. A local government commits remandable procedural error by taking official notice of natural resource base maps where the record does not establish that the maps are part of the comprehensive plan or land use regulations and does not establish that the maps were adopted by ordinance. *Oregon Pipeline Company LLC v. Clatsop County*, 69 Or LUBA 403 (2014).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. LUBA will strike documents attached to the petition for review that are offered as “context” for interpreting an administrative rule adopted in 1990, where the documents are not subject to official notice, long post-date the 1990 administrative rule, and could not provide “context” for interpreting the rule. *Fritch v. Clackamas County*, 68 Or LUBA 184 (2013).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. 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).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. A letter ruling from an Oregon circuit court judge constitutes decisional law and is therefore subject to official notice by LUBA. *ODOT v. City of Mosier*, 41 Or LUBA 73 (2001).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. LUBA will take official notice of zoning ordinances and judicially cognizable law, including decisional law. *North Park Annex Bus. Trust v. City of Independence*, 35 Or LUBA 827 (1998).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. LUBA cannot take official notice of a city’s notice of adoption of ordinance pursuant to OEC 202(2) because the city’s notice was not an “official act[] of the * * * executive department * * * of this state.” *Western PCS, Inc. v. City of Lake Oswego*, 33 Or LUBA 369 (1997).

1.6.3 Administrative Law – Substantial Evidence – Official Notice. With certain, limited exceptions, LUBA will not take official notice of historical facts contained in newspaper clippings that are not included in the record. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).