

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. ORS 197.830(7)(a) requires that a motion to intervene be filed within 21 days after the notice of intent to appeal is filed. Under OAR 660-010-0015(1)(b), a notice of intent to appeal is filed on the date it is mailed by registered or certified mail or the date it is received by LUBA. But OAR 660-010-0015(1)(b) does not set out two dates of filing, either of which may be relied upon as the date of filing for purposes of computing the deadline for filing a motion to intervene. Rather the rule makes the date of filing the date of mailing, if mailed by registered or certified mail, with the date of filing being the date the notice of intent to appeal is received by LUBA in all other circumstances. *Holmberg v. Deschutes County*, 76 Or LUBA 512 (2017).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. The filing of an amended response brief outside the time permitted for filing the response brief, and without permission from the Board to file an amended brief, is a violation of OAR 661-010-0035(1) and (5). *MGP X Properties, LLC v. Washington County*, 74 Or LUBA 378 (2016).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Under OAR 661-010-0075(8), where a deadline for filing a brief falls on a holiday, the filing must be performed on the next working day. Where the seven-day deadline for filing the reply brief fell on Thanksgiving, and the following day Friday all state offices were closed, including LUBA's, the "next working day" is the following Monday, so a reply brief filed on that Monday was timely filed. *Kine v. City of Bend*, 72 Or LUBA 423 (2015).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Because the cross petition for review is the functional equivalent of a petition for review, OAR 661-010-0030(7) imposes the same filing deadline that applies to petitions for review, and LUBA strictly enforces that filing deadline for cross petitions for review in the same way it strictly enforces that filing deadline for the petition for review. LUBA will grant a motion to strike a cross petition for review that is filed one day late. *Warren v. Josephine County*, 66 Or LUBA 471 (2012).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. An oral objection at oral argument to a reply brief that was filed more than three weeks earlier is untimely, and will not be considered. *Oh v. City of Gold Beach*, 60 Or LUBA 356 (2010).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Intervenor's failure to file a motion to intervene within 21 days of the date the notice of intent to appeal (NITA) was filed does not require denial of the motion where petitioner failed to serve the NITA on intervenor, as required by OAR 661-010-0015(3)(i). *Ford v. Jackson County*, 50 Or LUBA 359 (2005).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. The deadline for filing a motion to appear as an *amicus* is not a deadline that is rigidly enforced. Filing the motion to appear as *amicus* one day late, when the *amicus* brief was timely filed, does not prejudice other parties' substantial rights. *Nelson v. Curry County*, 48 Or LUBA 178 (2004).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Although a motion to dismiss may be filed at any time prior to the issuance of a final opinion and order, a party is not entitled to file unlimited motions on the same issue. When a party has had ample time to brief and

argue jurisdictional issues, LUBA is not obligated to reconsider earlier orders regarding jurisdiction. *Comrie v. City of Pendleton*, 46 Or LUBA 19 (2003).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. A technically deficient motion to intervene is sufficient to satisfy the 21-day deadline of ORS 197.830(7)(a) when an acceptable motion to intervene is subsequently filed and there is no prejudice to other parties' substantial rights. *Griffin v. Jackson County*, 40 Or LUBA 584 (2001).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Although OAR 661-010-0067(2) authorizes LUBA to suspend the deadline for filing the petition for review to allow time to rule on a motion to dismiss, the filing of a motion to dismiss or a memorandum opposing a motion to dismiss does not automatically suspend the deadline for filing the petition for review. *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Failure to file a notice to intervene within the 21-day period prescribed by ORS 197.830(7) does not require that intervention be denied where the petitioner did not serve the notice of intent to appeal on intervenor until 53 days after the notice was filed with LUBA. *Mountain West Investment v. City of Silverton*, 38 Or LUBA 932 (2000).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Where the local government mailed a copy of the decision to the applicant, and petitioners timely served a notice of intent to appeal on the applicant, the fact that the applicant's attorney did not receive a copy of either the decision or the notice of intent to appeal does not allow the applicant to file his motion to intervene beyond the 21-day deadline imposed by ORS 197.830(6). *Slusser v. Polk County*, 37 Or LUBA 1062 (2000).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. A motion to intervene is not timely filed where the person seeking to intervene files the original motion to intervene with LUBA more than 21 days from the date the notice of intent to appeal is filed, notwithstanding that that person served copies of that motion on the petitioner and the local government within the 21-day period. *Tylka v. Clackamas County*, 36 Or LUBA 801 (1999).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Untimely submission of a motion to file a reply brief is not a technical violation of LUBA's rules where the length of the proposed reply brief and the proximity of oral argument is such that respondents do not have adequate time to respond to the motion and prepare to respond to the proposed reply brief at oral argument. A 32-page reply brief filed two days before oral argument violates respondents' substantial rights to the speediest practicable review of the land use decision. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Petitioner's failure to serve a copy of the notice of intent to appeal on the applicant does not toll the 21-day period to intervene under ORS 197.830(6), where the applicant nonetheless received a copy of the notice and did not file a motion to intervene within 21 days of receiving the notice. *Bowlin v. Grant County*, 35 Or LUBA 776 (1998).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. A motion to intervene that is filed by mail within 21 days after the notice of intent to appeal is filed is timely filed under ORS 197.830(6), notwithstanding that the motion to intervene is not received by LUBA until 27 days after the notice of intent to appeal is filed. *Marshall v. City of Yachats*, 35 Or LUBA 82 (1998).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Amendments to ORS 197.830(6) that shorten the statutory deadline for filing a motion to intervene in a LUBA appeal impair the existing right to participate in an appeal. Thus, the statute applies prospectively in the absence of an expression of legislative intent to the contrary. *Gutoski v. Lane County*, 33 Or LUBA 866 (1997).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. A challenge to LUBA’s jurisdiction is not subject to the 10-day requirement of OAR 661-10-065(2), which governs motions that challenge an opposing party’s failure to comply with statutes or LUBA’s rules. *Adams v. City of Ashland*, 33 Or LUBA 552 (1997).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. A challenge to LUBA’s jurisdiction is not subject to the 10-day requirement of OAR 661-10-065(2); it may be brought at any time prior to LUBA’s issuance of a final opinion and order. *Petersen v. Columbia County*, 33 Or LUBA 253 (1997).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. The timeline imposed by our rules affecting reply briefs is intended less to provide a second opportunity for respondents to research issues already argued in their own brief than to provide a reasonable opportunity for respondents and this Board to review the reply brief. *Lett v. Yamhill County*, 32 Or LUBA 98 (1996).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Under OAR 661-10-067, time limits for documents other than the notice of intent to appeal and petition for review may be extended upon written consent of all parties, LUBA’s motion, or the motion of a party. *Save Amazon Coalition v. City of Eugene*, 30 Or LUBA 448 (1995).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. LUBA normally considers several factors in determining whether to accept a late petition for attorney fees and damages: (1) length of delay; (2) validity of the explanation of lateness; and (3) presence or absence of prejudice. *Save Amazon Coalition v. City of Eugene*, 30 Or LUBA 448 (1995).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. A motion challenging LUBA’s jurisdiction is not subject to the 10-day filing requirement for motions specified in OAR 661-10-065(2). *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. If an objection to the local record is filed, the time limits for filing the petition for review, respondents’ briefs and LUBA’s final opinion and order are suspended, regardless of whether the record objection is ultimately

sustained or denied. OAR 661-10-026(5). *DLCD v. Klamath County*, 24 Or LUBA 656 (1993).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Neither statutes nor LUBA rules establish an exact deadline for filing a motion to intervene. A motion to intervene filed four days after the respondent’s brief is filed is not untimely where the movant is an applicant of record who was not served with the notice of intent to appeal as required by ORS 197.830(8). *Broetje-McLaughlin v. Clackamas County*, 21 Or LUBA 606 (1991).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. A motion to intervene, filed along with the intervenor-respondent’s brief on the last day for filing a respondent’s brief, will be allowed where there is no prejudice to petitioner caused by the delay in moving to intervene. *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. LUBA considers filing a cost bill two days later than required by OAR 661-10-075(1)(a) to be a technical violation of its rules which will not interfere with LUBA’s consideration of the cost bill unless the parties’ substantial rights are prejudiced. *Schatz v. City of Jacksonville*, 21 Or LUBA 569 (1991).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Where (1) intervenor-respondent’s brief is filed 21 days late, (2) petitioners receive the brief less than one full day before oral argument, and (3) providing petitioners an opportunity to submit argument in response to the brief would delay issuance of LUBA’s final opinion, the late filing of intervenor’s brief is not an excusable technical violation of LUBA’s rules. *Knapp v. City of Jacksonville*, 20 Or LUBA 189 (1990).

27.10.5 LUBA Procedures/Rules – Time Limits – Other Documents. Petitioner’s motion to deny intervenor status, filed four days after a LUBA order determining the content of the local record was issued, is timely because, regardless of when a motion to intervene is filed, failure of the movant to participate in the proceedings below cannot be determined until it is known what the local record includes. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 537 (1990).