

27.17 LUBA Procedures/Rules – Mediation. 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).

27.17 LUBA Procedures/Rules – Mediation. When LUBA grants a stipulated motion for voluntary remand, LUBA leaves it to the parties to ensure that the procedures they agree to employ on remand are adequate to accommodate the rights of any persons who are entitled to participate in those proceedings on remand. LUBA does not review and approve those procedures in advance. *Boly v. City of Portland*, 40 Or LUBA 537 (2001).

27.17 LUBA Procedures/Rules – Mediation. Although parties to a stipulated voluntary remand may be bound by an agreement to limit the issues on remand concerning a disputed parking lot, non-parties are not bound by the stipulation and such non-parties have not waived their right to raise issues under *Beck v. City of Tillamook*, 313 Or 148, 153-54, 831 P2d 678 (1992), where the notice of hearing that preceded the only local hearing on the remanded decision failed to refer to the parking lot. *Boly v. City of Portland*, 40 Or LUBA 537 (2001).

27.17 LUBA Procedures/Rules – Mediation. A county governing body's decision to enter a settlement agreement that includes an agreement that the governing body will adopt certain ordinances does not render the public hearings that are subsequently held prior to adopting such ordinances something other than the kind of public hearing required by ORS 215.060, where the county counsel advised the governing body that it was free not to adopt the settlement ordinances and a transcript of the local proceedings shows the governing body did not believe it was legally bound to adopt the settlement ordinances without modification. *Waibel v. Crook County*, 40 Or LUBA 67 (2001).

27.17 LUBA Procedures/Rules – Mediation. Potential parties in a LUBA appeal can reasonably foresee that the appeal may lead to the challenged decision being affirmed, reversed or remanded, as a result of a decision on the merits or a stipulation by the parties. But such potential parties cannot reasonably foresee that the parties in a LUBA appeal will stipulate that LUBA should order the local government to adopt an amended decision. *Waibel v. Crook County*, 39 Or LUBA 749 (2000).

27.17 LUBA Procedures/Rules – Mediation. Under ORS 197.860, private litigants at LUBA may stipulate that a challenged decision should be remanded and replaced with a different decision. However, persons who were not parties in the initial appeal who participate in the proceedings on remand may appeal the amended decision to LUBA. *Waibel v. Crook County*, 39 Or LUBA 749 (2000).

27.17 LUBA Procedures/Rules – Mediation. Under ORS 197.860, parties may reach a mediated settlement in a LUBA appeal and request that LUBA order the local government to adopt a particular amended decision. However, in issuing such an order, LUBA does not review the

amended decision on the merits and persons who appeal the amended decision to LUBA may raise any issues on appeal that they did not waive by failing to participate in the initial LUBA appeal. *Waibel v. Crook County*, 39 Or LUBA 749 (2000).

27.17 LUBA Procedures/Rules – Mediation. A motion requesting a stay for mediation does not suspend the deadline for filing the petition for review, where respondent does not join in the motion and does not agree to enter mediation. *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

27.17 LUBA Procedures/Rules – Mediation. Under ORS 197.860 all parties, including intervenors-respondent, must stipulate that an appeal be suspended to allow the parties to enter mediation. Where intervenors-respondent do not stipulate that the appeal should be suspended to allow mediation, the appeal will not be suspended. *Genstar Land Company v. City of Sherwood*, 35 Or LUBA 832 (1999).

27.17 LUBA Procedures/Rules – Mediation. ORS 197.860 allows LUBA to stay an appeal proceeding for mediation only if all parties stipulate to such a stay. *Tylka v. Clackamas County*, 27 Or LUBA 699 (1994).