

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(4)(a)(E) requires that items in the record be arranged in inverse chronological order, unless the Board grants permission for a different organization. Where the record includes three large groupings, within which are a number of sub-groups, and some of the subgroups are not organized in inverse chronological order, to the extent some items are not located in inverse chronological order, but the defects are not material and do not prevent the parties from locating specific items in the record with reasonable effort and the reorganization might well result in a less accessible record than the present organization, LUBA will not require the county to organize the record to strictly comply with the rule. *DLCD v. Douglas County*, 79 Or LUBA 1029 (2019).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where staff in a proceeding on a legislative decision (1) provide to the final decision maker hard copies of selected portions of a document, (2) advise the decision-maker that the full hardcopy version of the document is in, or was previously placed in, the record, and (3) the final decision maker does not thereafter reject or limit the staff offer, a reasonable person would understand that the staff has thereby successfully “placed before” the final decision maker the full hardcopy version of the documents within the meaning of OAR 661-010-0025(1)(b). *DLCD v. Douglas County*, 79 Or LUBA 1029 (2019).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(4)(a)(B)(ii) allows the county to retain large maps and other difficult to duplicate items until oral argument, as long as such items are listed at the end of the table of contents. Where large maps displayed during the county’s hearings were retained by the county, and the county offers to bring the oversized maps to oral argument, but the county failed to list those maps in the table of contents, the county has failed to prepare an accurate listing of retained items in the table of contents consistent with the rule, and LUBA will order the county to revise the table of contents. *DLCD v. Douglas County*, 79 Or LUBA 1029 (2019).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Arguments that testimony is inadequately or inaccurately reflected in the minutes of the local proceedings may be adequate to justify requiring a local government to prepare a transcript of the proceedings where the objecting party demonstrates with particularity why the defect in the minutes is material. However, where petitioners’ argument is merely that it is challenging to identify the testimony in the local government’s voluminous record, and therefore LUBA should allow the documents to “resolve disputes regarding the content of the record,” and where petitioner states it “is not clear that the document was actually submitted,” there is no dispute regarding the content of the record, and petitioners have provided no basis for LUBA to allow the documents to be part of the record pursuant to OAR 661-010-0045(1). *Restore Oregon v. City of Portland*, 79 Or LUBA 1041 (2019).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will sustain petitioners’ record objections where the local government’s only response is that it could not verify that the documents were part of the record due to the lack of a date, signature and/or addressee, and petitioner provides evidence that petitioners sent the documents in question to all city commissioners in writing on April 4, 2018 by providing an email from one of the petitioners to each of the city commissioners with the documents in question attached, prior to the final decision. *Restore Oregon v. City of Portland*, 79 Or LUBA 1041 (2019).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the document to which petitioners object as having been improperly omitted from the record is an email sent by one of the petitioners to some, but not all, members of the city council, and no evidence in the record indicates that the email was submitted into the record by any of the recipients, the record was not “placed before” the final decision maker pursuant to OAR 661-010-0025(1)(b). *Restore Oregon v. City of Portland*, 79 Or LUBA 1041 (2019).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. When the county submits pre-decision documentation to DLCD in accordance with ORS 197.610(1) which requires local governments to provide information specified in ORS 197.610(3), including a copy of proposed amendments to DLCD, that material is properly included in the record. Also, when the county submits the post-decisional notice and information required by ORS 197.615(1) and (2), the county must either identify their location in the present record or submit them as part of a supplemental record. Additionally, if DLCD sent the county a substantive response to the information the county sent to DLCD, the response should be included in the record. *VanDyke v. Yamhill County*, 78 Or LUBA 1036 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioner does not assert that the media recordings were “specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker,” OAR 661-010-0025(1)(b), petitioner has not met its burden to demonstrate that the city improperly excluded the disputed items from the record. The city is required to transmit a record to LUBA that includes “all materials included as part of the record during the proceedings before the final decision maker.” OAR 661-010-0026(2)(a); OAR 661-010-0025(1)(c). In this proceeding, the city council was the final decision maker. Accordingly, neither OAR 661-010-0026(2)(a) or OAR 661-010-0025(1)(c) require the city to include media recordings of the planning commission hearings in the record. *Oster v. City of Silverton*, 78 Or LUBA 1079 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A media recording of a planning commission hearing that the city council, the final decisionmaker, did not incorporate into the record is not required to be included in the record under OAR 661-010-0025(1)(c). *Oster v. City of Silverton*, 78 Or LUBA 1079 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. While the city’s failure to include media recordings or transcripts of the planning commission hearings may be a basis for an assignment of error in the petition for review, that does not change the fact that the media recordings and transcript are not part of the record. For purposes of identifying the contents of the record required under OAR 661-010-0025, it does not matter whether the decision maker erred in accepting or excluding evidence. *Oster v. City of Silverton*, 78 Or LUBA 1079 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-0025(1), documents that are “placed before, and not rejected by, the final decision maker” are part of the record. No additional action by the local decision maker to formally admit such documents is required. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will not require correction of a record that is organized topically rather than in inverse chronological order by date of document as required by OAR 661-010-0025(4)(a)(E), where the topical organization reflects how the record was presented to the decision-makers below, and provides an equal or better means of accessing and understanding the role of individual documents in the proceedings. *Michaelson v. City of Portland*, 77 Or LUBA 579 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Audio recordings of preliminary meetings with planning staff that occur prior to the date of application are not part of the record of the decision on the application, unless those recordings are later incorporated into the record or placed before the final decision maker. *Michaelson v. City of Portland*, 77 Or LUBA 579 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-0025(1)(b), documents are properly included in the record at LUBA if they were “placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.” That an updated buildable lands inventory (BLI) was (1) available on the city’s website, (2) given to some property owners, and (3) discussed at planning commission and city council meetings is not sufficient to establish that the BLI was “placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.” *Bender v. City of Nehalem*, 77 Or LUBA 592 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. If an updated buildable lands inventory (BLI) was placed before the final decision maker and was not rejected, the BLI is part of the record under OAR 661-010-0025(1)(b). That the BLI may have erroneously been placed before the final decision maker after the final public hearing was closed may provide a basis for remand but that does not mean the BLI should not be included in the record under OAR 661-010-0025(1)(b). *Bender v. City of Nehalem*, 77 Or LUBA 592 (2018).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Deeds that transferred title for property that is the subject of some but not all of the property line adjustments that are the subject matter of the challenged decision, but that nevertheless post-date the decision, were not “placed before” the planner who approved the property line adjustments within the meaning of OAR 661-010-0025(1)(b), where the deeds were not actually provided to the planner prior to the decision. Simply because other deeds that also post-date the decision were included in the record, possibly erroneously, does not mean the remainder of the post-decision deeds must also be included in the record. *Sarett v. Lane County*, 76 Or LUBA 470 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Absent a motion to take evidence outside the record pursuant to OAR 660-010-0045, LUBA has no basis for considering diagrams that illustrate an entire series of property line adjustments that are the subject matter of the challenged decision, but that nevertheless contain hand-drawn lines, text, and other information which indicate at least some of the notations post-date the decision, and therefore the diagrams could not have been “placed before” the planner who approved the property line adjustments. *Sarett v. Lane County*, 76 Or LUBA 470 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A petitioner’s general assertion that all black and white copies of color originals should be replaced with color copies is an insufficient basis to require the local government to further amend the record, absent identification of specific items and some argument that specific black and white copies fail to provide material information present in the color originals. *Crowley v. City of Hood River*, 76 Or LUBA 475 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Although a petitioner’s attachment of a self-prepared transcript to portions of an audio recording of the city council meeting illustrates that the local government erroneously characterized petitioner as reaffirming testimony by an advocate in favor of proposed rezoning, petitioner has failed to demonstrate with particularity why the defect in the minutes is material, and therefore failed to establish any reason to delay settling the record to correct immaterial defects in the minutes pursuant to OAR 661-010-0026(3). *Crowley v. City of Hood River*, 76 Or LUBA 475 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioner may not rely upon a project opponent’s attempt to incorporate content into the record by reference before the city council because such an attempt is not a sufficient basis to include the referenced material in the record. Pursuant to OAR 661-010-0025(1)(b), only the final decision-maker can “specifically incorporate[]” items into the record by reference. *Crowley v. City of Hood River*, 76 Or LUBA 475 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioner offers some additional deeds and diagrams from a 2017 legal lot verification proceeding, in a challenge to a 2016 application for multiple property line adjustments, LUBA may not consider the additional post-decision deeds and diagrams where the parties agree that the 2016 application approved more than a single property line adjustment, and thus the deeds and diagrams do not offer anything material as to a “disputed factual allegation in the parties’ briefs” pursuant to OAR 661-010-0045(1). *Sarett v. Lane County*, 76 Or LUBA 485 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. In a motion to take evidence outside the record filed before the parties have submitted briefs, LUBA considers it axiomatic that a document rejected from the local record is not part of the local record, for purposes of settling the content of the record, even if LUBA later concludes, after briefing on the merits, that the document was erroneously rejected from the local record. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0045(1) provides that LUBA may take evidence to resolve disputes regarding the content of the record. Under OAR 661-010-0045(1), LUBA will grant a motion to take evidence to consider evidence regarding the submission of testimony to the decision-maker, where there is an unresolved dispute regarding whether the decision-maker rejected the proffered testimony. *Oregon Shores Conservation Coalition v. Coos County*, 75 Or LUBA 534 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a party submits confidential information to the local decision-maker and requests that the information be kept confidential, and the decision-maker directs staff to keep the confidential information separate from the public record, the decision-maker has not “rejected” the information from the record, but rather accepted

the information, and granted the request to keep the information confidential. *Oregon Shores Conservation Coalition v. Coos County*, 75 Or LUBA 534 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the petitioner agrees to accept an electronic copy of the record on compact discs pursuant to OAR 661-010-025(2)(a) on the express condition that the electronic copy be searchable, but the first record the local government serves on the petitioner is not searchable, the local government must serve petitioner with a searchable copy of the record on compact discs or the equivalent medium, and cannot fulfill its obligation by simply providing a link to an on-line site that includes a searchable copy of the record. *Oregon Shores Conservation Coalition v. Coos County*, 75 Or LUBA 534 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Providing the parties with a link to an on-line site that includes an electronic copy of the record, along with a supplemental record developed in response to record objections, is a problematic means of serving the record on the parties and resolving record objections, because on-line links are unreliable, and the documents at the end of those links can be modified without notice. *Oregon Shores Conservation Coalition v. Coos County*, 75 Or LUBA 534 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents that are only referred to in testimony but not actually placed before the decision maker are not part of the record. *Loftis v. City of Beaverton*, 75 Or LUBA 558 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A party who gives a PowerPoint presentation in a land use hearing and wants that PowerPoint presentation to be part of the record must place a paper or digital copy of the PowerPoint Presentation before the decision maker. *Neighbors for Smart Growth v. Washington County*, 75 Or LUBA 561 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A video recording of a land use hearing by a community television station is not properly included in the local government record, because the local government did not make the recording and has no control over the television station. *Neighbors for Smart Growth v. Washington County*, 75 Or LUBA 561 (2017).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a party discusses a deed during her testimony below, but fails to submit a copy of the deed to the local government, in the mistaken belief that the deed had already been submitted, the deed was not placed before the final decision maker, and is not part of the local record. *Neil v. Columbia County*, 74 Or LUBA 614 (2016).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will consider an uncontested affidavit that a hearings officer considered only portions of the record of a lot-of-record decision provided by the applicant, and did not consider the entire record, to resolve an objection that the entire record was placed before the hearings officer. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 638 (2016).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Planning staff e-mails with the applicant regarding writing the final decision are not part of the record of a decision by the county

board of commissioners, unless the e-mails are “placed before” the commissioners. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 638 (2016).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A photograph that is shown to but not given to the final decision maker is not “placed before * * * the final decision maker” within the meaning of OAR 661-010-0025(1)(b) and is not properly included in the record that is transmitted to LUBA. *Rawson v. Hood River County*, 74 Or LUBA 668 (2016).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will accept a record organization that consists of the challenged hearings officer’s decision with all other documents attached as exhibits to that decision, notwithstanding that the documents within the exhibits are not organized in inverse chronological order as required by OAR 661-010-0025(4)(E), where the record was organized in that way before the hearings officer, and the table of contents lists each document, so locating individual documents requires little effort. *Frewing v. City of Portland*, 73 Or LUBA 392 (2016).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. As a general rule, OAR 661-010-0025(4)(B)(i) does not require that exhibits to exhibits must be separately listed in the table of contents, although an exception to that general rule may be warranted where an exhibit is made up of many unrelated documents. *Pinnacle Alliance Group, LLC v. City of Sisters*, 72 Or LUBA 480 (2015).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA interprets OAR 661-010-0025(2)(a) and 661-010-0025(4)(a)(B) to require that all record documents that are retained by the local government until oral argument must be identified on a list at the end of the table of contents. This requirement applies, even if reduced copies of oversized originals or black and white copies of retained color originals are included and indexed in the record that is transmitted to LUBA. *Fernandez v. City of Portland*, 72 Or LUBA 482 (2015).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(4)(a)(B)(i) provides in part that “[w]here an item listed in the table of contents includes attached exhibits, the exhibits shall be separately listed as an exhibit to the item.” As a general rule, OAR 661-010-0025(4)(a)(B)(i) does not require that exhibits to exhibits must be separately listed in the table of contents. *Fernandez v. City of Portland*, 72 Or LUBA 482 (2015).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(4)(a)(B)(i) provides in part that “[w]here an item listed in the table of contents includes attached exhibits, the exhibits shall be separately listed as an exhibit to the item.” Where a record table of contents does not separately list the attachments to a document that is included in the record and identified in the table of contents, but the record table of contents includes a specific or general description of all the attachments, any failure to fully comply with OAR 661-010-0025(4)(a)(B)(i) is not a basis for ordering that the table of contents be revised to separately list the attachments. *Fernandez v. City of Portland*, 72 Or LUBA 482 (2015).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Including hyperlinks in a document that is submitted for the record in a quasi-judicial land use proceeding is not sufficient, without

more, to make the documents that can be accessed via those hyperlinks part of the local government's record. *Fernandez v. City of Portland*, 72 Or LUBA 482 (2015).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where LUBA finds a development agreement is a precondition for the local government's application of special spacing standards to a proposed truck stop and remands the decision, the record in a subsequent appeal of a decision approving the development agreement includes the record of the appeal that led to the original remand, at least in circumstances where LUBA cannot tell whether the prior record will be needed to allow LUBA to review the development agreement. *Space Age Fuel, Inc. v. Umatilla County*, 71 Or LUBA 378 (2015).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the minutes of a city council meeting state that a party read aloud and submitted a letter, and further state that the letter "will be included as part of tonight's record copy," the letter should be included in the record because it was "placed before, and not rejected by" the city council at the city council hearing on an application, within the meaning of OAR 661-010-0025(2). *Harrison v. City of Cannon Beach*, 71 Or LUBA 422 (2015).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-0025, the "course of proceedings before the final decision maker" includes any public hearing or public meeting on an application held by the final decision maker, even where the evidentiary record is closed and no public testimony or other evidence is allowed. Although the evidentiary record may be closed, that does not mean that any documents that are generated during the post-evidentiary phase of the local proceedings in order to adopt the final decision and provide required notices of that decision need not be included in the record. *Harrison v. City of Cannon Beach*, 71 Or LUBA 422 (2015).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the local code provides that the final order being appealed is part of the record of an appeal of an administrative decision to the city council, the initial city manager decision on an application is included in the record by operation of law. *Smith v. City of Gearhart*, 70 Or LUBA 519 (2014).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will deny a record objection asserting that a newspaper clipping in the record was not placed before the city council, where the minutes of the city council hearing reflect that a city council member read from the clipping as part of her disclosure of *ex parte* communications, which supports the city's position that the clipping was placed into the record. *Port of Umatilla v. City of Umatilla*, 70 Or LUBA 527 (2014).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will deny an objection that the minutes of a city council hearing are incomplete, because the minutes fail to summarize the oral arguments of petitioner's attorney, where the same arguments are found in writing elsewhere in the record, and petitioner's argument that the defect in the minutes is "material" rests on speculation that petitioner will advance assignments of error to which, petitioner speculates, the respondent might raise waiver challenges. *Port of Umatilla v. City of Umatilla*, 70 Or LUBA 527 (2014).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will require a local government to provide a partial transcript of the city council’s deliberations, where the minutes provide no summary at all of the deliberations, and petitioner demonstrates that the defect is material to a key issue in the appeal. *Port of Umatilla v. City of Umatilla*, 70 Or LUBA 527 (2014).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Any error in the record table of contents in describing a city council proceeding as a “hearing” rather than a “meeting” does not warrant a revised table of contents, because how the table of contents describes the proceeding cannot change the nature of that proceeding. *Port of Umatilla v. City of Umatilla*, 70 Or LUBA 527 (2014).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will deny a motion to take evidence to consider an affidavit regarding whether building plans were “placed before” the final decision-maker and thus are part of the local record, where there is no factual dispute that the building plans were not placed before the final decisionmaker, and whether the plans belong in the record depends on a legal argument that the plans were included in the record by operation of law. A motion to take evidence is warranted only where there are disputed factual allegations; a dispute over the legal consequences of undisputed facts is not a basis for LUBA to consider extra-record evidence. *Port of Umatilla v. City of Umatilla*, 70 Or LUBA 527 (2014).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Building plans that are submitted to planning staff as part of an application for site plan review are not necessarily part of the local record transmitted to LUBA, if the building plans are not “placed before” the final decision maker, and no local regulation or other source of law incorporates all documents submitted as part of an application as part of the local record by operation of law. *Port of Umatilla v. City of Umatilla*, 70 Or LUBA 527 (2014).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Items rejected from the local record are properly excluded from the record transmitted to LUBA. Where a local government rejects portions of a document, and includes only a redacted version of the document in the record, the petitioner may attach to the petition for review the unredacted document, in support of any of an assignment of error alleging that the local government erred in rejecting the redacted portions. If no party objects, LUBA will consider the attached document for the limited purpose of resolving that procedural assignment of error. If a party objects, the petitioner may file a motion to take evidence to allow LUBA to consider the unredacted document for that same limited purpose. *Port of Umatilla v. City of Umatilla*, 70 Or LUBA 527 (2014).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a city submits an original five-volume record, and later submits an “amended” nine-volume record and requests that the amended record replace the original record, but the amended record inadvertently omits a number of documents, the simplest solution is for the original record to remain part of the record, and allow parties to cite to the original record to the extent necessary. *Terra Hydr Inc. v. City of Tualatin*, 68 Or LUBA 511 (2013).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Providing an electronic link to a document located on a city’s website is an insufficient means to provide a copy of the document

to LUBA and the parties as part of the local record. *Terra Hydr Inc. v. City of Tualatin*, 68 Or LUBA 511 (2013).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A supplemental traffic impact analysis is included in the local record where it (1) was submitted to city staff to supplement a land use permit application, (2) was submitted in the same way that many documents in the record were submitted, (3) was available to all parties and city council throughout the proceedings, and (4) is referred to in a number of documents in the record and the findings adopted to support the decision. *Zian Limited Partnership v. City of Tualatin*, 68 Or LUBA 560 (2013).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(1) is not exhaustive in its listing of the contents of the record, because it provides “the record shall include at least the following[.]” *Save Downtown Canby v. City of Canby*, 67 Or LUBA 480 (2013).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Paper or media copies of visual presentations by planning staff to the land use decision maker are properly included in the record that is transmitted to LUBA, even if media or paper copies of that visual presentation were not presented for the record below. *Save Downtown Canby v. City of Canby*, 67 Or LUBA 480 (2013).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Unless the local code provides otherwise, permit proceedings generally begin when the application is filed, for purposes of compiling the local record of a land use permit proceeding. Recordings or minutes of city council work sessions conducted prior to submission of the application are not part of the record of the land use permit proceeding. *STOP, LLC v. City of West Linn*, 67 Or LUBA 494 (2013)

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Written notes or documents created by individual city council members and not shared with the city council are not “placed before” the final decision maker for purposes of OAR 661-010-0025, and are not part of the record. *STOP, LLC v. City of West Linn*, 67 Or LUBA 494 (2013)

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The major concern of OAR 661-010-0025(4)(a)(B), which requires that the record table of contents separately list exhibits attached to items, is to avoid listing as a single item large collections of documents spanning numerous pages. The rule is less concerned with documents with one or two short attachments, where such attached documents can be located with reasonable effort. *STOP, LLC v. City of West Linn*, 67 Or LUBA 494 (2013)

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the local government on remand from LUBA conducts a single, consolidated proceeding that results in adoption of two ordinances and an order, on appeal of the two ordinances to LUBA the record includes the unappealed order, because the order was placed before the final decision maker during the proceedings on the ordinances. *Hatley v. Umatilla County*, 66 Or LUBA 427 (2012).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A statement in a staff memorandum to the planning commission that documents are “made a part of the record and are available” on a

city website is insufficient to incorporate the documents into the record. *Central Oregon Landwatch v. City of Bend*, 66 Or LUBA 445 (2012).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will deny as unnecessary a motion to take evidence to accept a supplemental record that includes a copy of the notice of adoption sent to DLCD, which is required to be included in the record pursuant to OAR 660-010-0025(1)(d). LUBA will accept the untimely filed supplemental record over the petitioner's objection, where the untimely submission does not prejudice any party's substantial rights. *Conte v. City of Eugene*, 65 Or LUBA 326 (2012).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a later version of a staff report is the only version of the staff report that was placed before the local government decision maker, an earlier version of the staff report that was made available to the public prior to the final public hearing need not be included in the record under OAR 661-010-0025(1)(b). In that circumstance, the earlier version of the staff report also need not be included in the record under OAR 661-010-0025(1)(d), which requires that the record in a LUBA appeal include local notices of hearing without regard to whether the notices were actually placed before the decision maker, where the earlier version of the staff report was not included with the notice of hearing and the notice of hearing merely provided information about how to obtain a copy of the earlier version of the staff report. *Heitsch v. City of Salem*, 65 Or LUBA 449 (2012).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. 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).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A statement in a city council decision that adopts amendments to city septic system regulations that in considering the amendments the city council considered original septic system regulations is not sufficient to incorporate the legislative record of the original septic system regulations as part of the record of the amended septic system regulations. *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 452 (2012).

27.3.2 LUBA Procedures/Rules – Content/Form. OAR 661-010-0025(4)(a)(B) requires that a record table of contents list "each item contained therein" and that "where a listed item includes attached exhibits, its exhibits shall be separately listed." A document that is submitted independently of any other document during the proceedings below is an "item" rather than an "exhibit" for the purposes of OAR 661-010-0025(4)(a)(B). An "exhibit," for the purposes of OAR 661-010-0025(4)(a)(B), is a document that is "attached" to a lead document that is listed as an "item." *Rogue Advocates v. Josephine County*, 65 Or LUBA 479 (2012).

27.3.2 LUBA Procedures/Rules – Content/Form. That items are improperly listed as exhibits and are not organized in inverse chronological order is not sufficient to prejudice any party’s substantial rights, where the added minor degree of difficulty in locating unidentified exhibits in the record resulting from a failure to list those exhibits in violation of OAR 661-010-0025(4)(a)(B) does not warrant further delay in the appeal solely to require submission of a revised table of contents. *Rogue Advocates v. Josephine County*, 65 Or LUBA 479 (2012).

27.3.2 LUBA Procedures/Rules – Content/Form. Even if documents were untimely submitted into the record during the proceedings below, and should have been excluded from the record, that does not mean that other untimely submitted documents should also be included. *Rogue Advocates v. Josephine County*, 65 Or LUBA 479 (2012).

27.3.2 LUBA Procedures/Rules – Record –Content/Form. LUBA will sustain an objection that the record fails to include documents and attachments that were submitted by sending an email message and attachments to a planner with a request that the email message and attachments be included in the record, where the record includes other documents that were submitted to the county planner in the same fashion. *Sane, Orderly Development, Inc. v. Douglas County*, 63 Or LUBA 578 (2011).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Deviation from the requirement in OAR 661-010-0025(4) that the record be organized in inverse chronological order is permissible, where placing documents with attachments in the same form and relationship they were presented below results in a more usable and accurate record than one in which the documents and attachments are organized by strict document date. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 484 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A code provision stating that the governing body’s “review proceeding” shall be based upon the record of the decision being reviewed is not properly understood to automatically incorporate into the record before the governing body the entire record of a planning commission recommendation on a proposed comprehensive plan amendment, where in context it is clear that “review proceeding” refers to circumstances where the governing body calls up a planning commission decision for review, and does not refer to mandatory review of a planning commission recommendation. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 484 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Local government staff cannot effect the incorporation of an unrelated LUBA appeal record into the local record by simply stating so in the record table of contents, if the unrelated record was not actually included or incorporated in fact or by operation of law into the record below. *Brodersen v. City of Ashland*, 62 Or LUBA 496 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where local government staff brings the record of an unrelated LUBA appeal to the hearing before the planning commission and gives the commissioners packets including a link to the city’s website where an electronic copy of the record of that unrelated appeal can be viewed, that is sufficient to demonstrate that the unrelated

record was “placed before” the planning commission. *Brodersen v. City of Ashland*, 62 Or LUBA 496 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Because LUBA does not retain its copy of the record after the appeal is finished, where the record table of contents reflects the incorporation of an old LUBA appeal record into the local record pursuant to OAR 661-010-0025(4)(b), the local government must transmit a copy of that old LUBA appeal record to LUBA as part of local record of the decision on appeal. *Brodersen v. City of Ashland*, 62 Or LUBA 496 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the planning commission conducts a hearing on an appeal of a staff decision, the staff decision is necessarily “placed before” the planning commission and hence part of the record of the planning commission decision. *Brodersen v. City of Ashland*, 62 Or LUBA 496 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Absent an express indication that a local government intended that documents on the local government’s website would become part of the record of a land use proceeding, the mere act of making documents available on a website is not sufficient to place the documents before a decision maker, just as making documents in a physical folder in the planning department’s central files available to the public is not sufficient to place those documents before the decision maker. *Gunderson, LLC v. City of Portland*, 62 Or LUBA 505 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Even prior to 2010 amendments to OAR 661-010-0025(4), LUBA interpreted the rule to require that the record table of contents separately list attachments or exhibits to documents, where the attachments comprise a large portion of the record and individual documents cannot be located with reasonable effort. Where the table of contents lists four items comprising almost half the 1900-page record, a revised table of contents is necessary to separately list the documents, attachments and exhibits that are part of each item. *Setniker v. Polk County*, 62 Or LUBA 517 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the record includes incorporated copies of prior LUBA records, the record table of contents must reflect the incorporation, and further the local government must physically transmit a copy of the incorporated records to LUBA, either as part of the record on appeal or by bringing the copy of the incorporated record to LUBA at oral argument. *Setniker v. Polk County*, 62 Or LUBA 517 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government establishes that documents were placed before, and not rejected by, the final decision maker during the proceedings before the decision maker, it is irrelevant that the date on the documents pre-dates the date of an application. *Willamette Oaks, LLC v. City of Eugene*, 62 Or LUBA 522 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a party does not submit a document into the record due to an alleged misunderstanding regarding whether the document is already in the record, such misunderstanding might constitute procedural error if the local

government provided misinformation about the content of the record, but it does not provide a basis to conclude that the record must be supplemented to include a document that was not actually submitted into the record. *Citizens Against LNG, Inc. v. Coos County*, 62 Or LUBA 550 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The act of placing a link on the local government’s website to a video recording of a hearing not made by the local government, and that is located on a different website not under the local government’s control, does not make the video recording part of the local record. *Citizens Against LNG, Inc. v. Coos County*, 62 Or LUBA 550 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. While OAR 661-010-0025(4)(a)(E) mandates that the record in a LUBA appeal be organized in inverse chronological order, LUBA has consistently treated violation of OAR 661-010-0025(4)(a)(E) as a “technical violation” of LUBA’s rules, which requires no remedial action as long as the record is organized in a manner that is reasonably usable by the parties and LUBA. Under OAR 661-010-0005 only two rule violations categorically cannot be treated as “technical violations,” and OAR 661-010-0025(4)(a)(E) is not one of them. *Burness v. Douglas County*, 61 Or LUBA 530 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. When during the proceedings on remand from LUBA, the local government allows additional argument but no new evidence, and the local government redacts written testimony that it considers new evidence, the unredacted documents are not properly part of the record. *Columbia Riverkeeper v. Clatsop County*, 60 Or LUBA 454 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. When during the proceedings on remand from LUBA, the local government allows additional argument but no new evidence, the local government is not required to erase oral testimony that contains new evidence from the recordings of meetings submitted to LUBA. OAR 661-010-0025(1)(b) only applies to *written* documents, not oral testimony. *Columbia Riverkeeper v. Clatsop County*, 60 Or LUBA 454 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where an applicant submits a single narrative to support multiple applications and the planning commission approves each application in a separate decision, but only one decision is appealed to the governing body, the record includes the redacted form of the application narrative that are placed before the final decision maker, not the full narrative that was not placed before the final decision maker. *Kane v. City of Beaverton*, 60 Or LUBA 497 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A local government may retain a difficult-to-duplicate original photograph and submit that original photograph to LUBA at oral argument. LUBA’s rules do not require the local government to provide petitioner with a copy of that original photograph at oral argument. *Kane v. City of Beaverton*, 60 Or LUBA 497 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a staff report to the final decision maker or similar document collects together testimony and evidence submitted during lower proceedings and that testimony and evidence is attached to the staff report, the record table

of contents should separately list such attached documents rather than simply list the staff report. *Kane v. City of Beaverton*, 60 Or LUBA 497 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the record table of contents lists as a single item a 70-page collection of miscellaneous documents submitted by the applicant on the same date, and significant effort is required to locate particular documents in that collection, the table of contents must be amended to separately list each document. *Kane v. City of Beaverton*, 60 Or LUBA 497 (2010).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. ORS 661-010-0025(1)(b) requires that the record that a local government transmits to LUBA must include “[a]ll written testimony and all exhibits, maps, documents or other written materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.” However, where a city’s land use code provides that “[t]he record shall contain all testimony and evidence that is submitted to the City, the Planning Commission, and the City Council and not rejected,” testimony and evidence that is submitted to city planning staff must be included in the record, even if it was never actually placed before the city council, which was the final decision maker. *Montgomery v. City of Dunes City*, 59 Or LUBA 519 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. In a LUBA appeal that challenges a city letter to a subdivision developer that takes the position that (1) streets in a previously approved and platted subdivision have been improperly constructed and do not comply with tentative subdivision plan conditions of approval and (2) building permits will not be issued for lots in the subdivision until existing violations are corrected, the record that is filed with LUBA must include any documents that were actually placed before the city council in making its decision to send the letter. An objection that the record in the appeal of the letter should include documents that were generated during earlier proceedings that led up to tentative and final subdivision approval decisions that were not appealed to LUBA will be denied where there is no claim that the requested additional documents were placed before the city council during the deliberations that led up to the city sending the letter and the city takes the position that they were not placed before the city council during those deliberations. *Calvary Construction, LLC v. City of Glendale*, 59 Or LUBA 539 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioner and respondent disagree about when a legislative proceeding began, and if petitioner is correct a large number of additional documents must be added to the record, petitioner’s record objection will not be rejected simply because petitioner does not specifically identify each of the documents that petitioner believes should be added to the record. *Home Builders Association v. City of Eugene*, 58 Or LUBA 688 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. ORS 197.830(10), which requires that a respondent transmit to LUBA “the entire record of the proceeding under review,” does not require that every document that has any bearing on a legislative proceeding must be included in the record. *Home Builders Association v. City of Eugene*, 58 Or LUBA 688 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A city may decide that the record of its legislative land use proceeding began when notice was given of the hearing before the planning commission, and does not include earlier scoping and prioritizing proceedings, where that decision is consistent with local law. Such a decision is within any implied limits imposed by ORS 197.830(10)(a) and OAR 661-010-0025(1). *Home Builders Association v. City of Eugene*, 58 Or LUBA 688 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents that were placed before the city council during a scoping and prioritizing stage that predated the commencement of a city legislative land use proceeding need not be included in the record that is filed with LUBA. *Home Builders Association v. City of Eugene*, 58 Or LUBA 688 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Simply making documents available on a local government’s website does not make them part of the record of a legislative land use proceeding. However, where the local government expresses an intent that specified documents that are available on the city’s website should be considered by the decision makers and parties to be part of the record, the fact that the city only provides paper copies of selected website documents to the local decision makers does not mean that the other website documents are not also part of the record. *Graser-Lindsey v. City of Oregon City*, 58 Or LUBA 703 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioner objects that mailing lists should not be included in the record, but resolving petitioner’s record objection would require LUBA to determine whether notice was in fact sent to persons on the mailing lists, LUBA will allow the mailing lists to remain in the record and resolve any issue concerning whether notices were sent to persons on the mailing lists in its decision on the merits. *Graser-Lindsey v. City of Oregon City*, 58 Or LUBA 703 (2009).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision discusses an exhibit, but it is not clear whether that discussion is based on (1) review of the exhibit or (2) testimony about the exhibit, and the local government states that the exhibit has long been missing from the city’s files and was not before the final decision maker, LUBA will deny an objection based on the omission of the exhibit from the record. *Dahlen v. City of Bend*, 56 Or LUBA 789 (2008).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Because the respondent is the custodian of the record, and petitioner has the ultimate burden of demonstrating that the local record is deficient under OAR 661-010-0026(2), petitioner’s mere disagreement with respondent regarding whether a disputed item was submitted to the city during the proceedings below is insufficient to establish that the item was submitted. *Curl v. City of Bend*, 56 Or LUBA 794 (2008).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record must include audio recordings of hearings conducted by the final decision maker leading to the decision under appeal, but audio recordings of a different hearing on a separate land use application leading to a different decision are not part of the record on appeal, even if statements regarding the decision under appeal were made during the hearing on the different application. *Curl v. City of Bend*, 56 Or LUBA 794 (2008).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A statement in petitioner’s written testimony that it is accompanied by other documents “submitted to support” the testimony is insufficient to establish that petitioner actually submitted the referenced documents into the record of the decision on appeal, where the written testimony is copied from a document submitted in a different land use matter and the city disputes that the referenced documents were actually submitted into the record of the decision on appeal. *Curl v. City of Bend*, 56 Or LUBA 794 (2008).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(4) requires that both the record filed with LUBA and the copy of the record served on the petitioner be “securely fastened on the left side.” Where the copy filed with LUBA is organized into five binders but the copy served on petitioner consists of a 3,000-page unbound collection of loose documents, LUBA will order the respondent to provide petitioner with binders or a similar suitable means to fasten together the service copy. *Curl v. City of Bend*, 56 Or LUBA 794 (2008).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-0075(6), a county may only appear in a LUBA appeal through an attorney. Where the county attorney advises LUBA that the county will not participate in an appeal, and the county planning department letter provides LUBA with a copy of its letter responding to the petitioner’s record objections, LUBA will not treat that letter as the county’s response to petitioner’s record objections. *SOPIP v. Coos County*, 56 Or LUBA 802 (2008).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A record table of contents that lists thousands of pages of miscellaneous documents spread over several volumes as a single item does not comply with the OAR 661-010-0025(4)(a)(B) requirement that the table of contents list each item contained therein. *Kane v. City of Beaverton*, 55 Or LUBA 669 (2007).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the petitioner and local government simply disagree about whether particular pages were included in a copy of a document that was submitted to the local government for inclusion in the record, absent reason to proceed otherwise, LUBA will generally accept the local government’s position, as the custodian of the record. *Curl v. City of Bend*, 55 Or LUBA 719 (2008).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government transmits a 4,457-page record to LUBA in eight three-ring binders but serves a copy of that record on petitioner without similarly placing the record in three-ring binders or otherwise securely fastening the record on the left side as required by OAR 661-010-25(4)(a)(C), LUBA will require that the local government supply record binders to petitioner. *Curl v. City of Bend*, 55 Or LUBA 719 (2008).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents that are on a medium other than plain printer paper, such that they are not easily copied on a standard office black and white copier are properly omitted from the record that is initially transmitted to LUBA and retained by a local government and separately transmitted to LUBA as part of the record at the time set for oral argument under OAR 661-010-0025(2). *Walker v. Deschutes County*, 54 Or LUBA 752 (2007).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents that are oddly shaped or sufficiently large that they cannot be easily reduced and printed on a standard 8-1/2-by-11-inch page by a standard office copier, are properly retained by a local government at the time it initially transmits the record to LUBA and separately transmitted to LUBA as part of the record at the time set for oral argument under OAR 661-010-0025(2). *Walker v. Deschutes County*, 54 Or LUBA 752 (2007).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record submitted by a local government must include color copies or black and white copies of any color documents that are on 8-1/2-by-11-inch pages or on pages that are easily reduced to 8-1/2-by-11-inch pages by standard office copiers. If black and white copies of color originals are included in the record, the color originals must be submitted at the time set for oral argument in accordance with OAR 661-010-0025(2). *Walker v. Deschutes County*, 54 Or LUBA 752 (2007).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(1)(c) itself does not require local governments to prepare minutes of proceedings before a hearing officer; instead, the rule simply requires that any minutes that are “required by law” must be included in the record. *Ford v. Jackson County*, 54 Or LUBA 778 (2007).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Although OAR 661-010-0025(1)(b) allows a local government to incorporate documents into the record, even though those documents are not physically placed before the local government in a land use proceeding, the local government must actually incorporate such documents. Acknowledging that a party has requested that a document be incorporated as part of the record is not the same thing as granting that request. *Rhinhart v. Umatilla County*, 53 Or LUBA 601 (2006).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A party’s argument that the record should be supplemented with a written summary of the party’s conversation with a city planner will be denied where petitioner does not claim that the city was required by law to keep minutes of planning staff conversations regarding zoning confirmation applications or make tape recordings of such conversations. *Jackson v. City of Portland*, 53 Or LUBA 612 (2007).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Meetings in which one city commissioner participated are not “proceedings before the final decision maker,” within the meaning of OAR 661-010-0025(1)(b). *Thunderbird Hotels, LLC v. City of Portland*, 53 Or LUBA 625 (2007).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the decision makes clear that reports referred to in the decision were not before the local government during the deliberations that led to the challenged decision, such reports are not properly part of the record. *Thunderbird Hotels, LLC v. City of Portland*, 53 Or LUBA 625 (2007).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the parties agree to include documents in the record of a LUBA appeal that go beyond the minimum requirements of OAR 661-010-0025(1), LUBA has authority to defer to such an agreement. However, LUBA will not

defer to an agreement of the parties to supplement the record of a pending LUBA appeal with the record of a related land use proceeding that is pending before the local government where (1) it is not clear that all parties agree the record should be supplemented in that way, (2) the pending LUBA appeal would have to be suspended for an unspecified period of time, and (3) there is no apparent need for the requested supplemental record. *Wolfgram v. Douglas County*, 52 Or LUBA 767 (2006).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a county encourages parties to submit documents into the record by faxing them to county planning staff, documents submitted in that manner are part of the local record. *Rickreall Community Water Assoc. v. Polk County*, 52 Or LUBA 772 (2006).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record table of contents complies with OAR 661-010-0025(4)(a)(B) if it is specific enough to enable the parties to locate individual documents in the record with reasonable effort. *Rickreall Community Water Assoc. v. Polk County*, 52 Or LUBA 772 (2006).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a plan for prioritizing and funding park facilities is separated from a larger, more comprehensive parks planning effort that was initiated by the city planning commission, and the plan for prioritizing and funding park facilities is thereafter subject to public hearings by the city council without any recommendation from the planning commission and adopted separately from the larger more comprehensive parks planning effort, the record of that plan for prioritizing and funding park facilities need not include any part of the record of the larger more comprehensive parks planning effort. *Home Builders Assoc. v. City of Eugene*, 52 Or LUBA 788 (2006)

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Materials submitted to the city council during a “citizen comment” portion of a meeting that occurs after the proceedings related to the decision being appealed have ended, and after the city council has deliberated and reached a decision on the appeal, are not “placed before” the decision maker “during the course of the proceedings before the final decision maker,” and are not part of the record under OAR 661-010-0025(1)(b). *Sommer v. City of Grants Pass*, 52 Or LUBA 802 (2006).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. While mere reference to a document in testimony is an insufficient basis to conclude that the referenced document is incorporated into the record, where the decision itself refers to a document in a manner that suggests the document was considered by the decision maker, absent some reason to conclude otherwise the document is part of the record. *Tualatin Riverkeepers v. ODEQ*, 51 Or LUBA 826 (2006).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision refers to and requires specific changes to existing storm water management manuals, that is some indication that the decision maker reviewed those manuals, and the burden shifts to the respondent to substantiate its assertion that the manuals were not in fact before the decision maker. *Tualatin Riverkeepers v. ODEQ*, 51 Or LUBA 826 (2006).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents may be incorporated into a land use decision only if the decision maker clearly indicates the intent to do so and adequately identifies the document incorporated. Statements that a stormwater permit includes “best management practices” does not mean that documents described under federal regulations as “best management practices” are incorporated into the permit. *Tualatin Riverkeepers v. ODEQ*, 51 Or LUBA 826 (2006).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Although small supplemental records may not warrant all of the formalities that are normally required of supplemental records under LUBA’s rules, even small record supplements must be accomplished in a way that will allow all parties to (1) keep up with what is included in the record and (2) accurately cite to pages in those documents when they file their briefs. *City of Happy Valley v. City of Damascus*, 50 Or LUBA 718 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a city’s notice of hearing specified a date and time for submitting comments before the city’s public hearing and an e-mail message was sent after the date specified in the notice and was not actually placed before the decision maker at the noticed hearing, the e-mail message is properly excluded from the record. *Neighbors 4 Responsible Growth v. City of Veneta*, 50 Or LUBA 745 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The failure of a local government to provide LUBA with the entire local record does not in itself require remand. However, where the record is so inadequate that LUBA cannot adequately review the decision, the local government’s failure to provide the whole record may result in remand. *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. While OAR 661-010-0025(4)(a)(B) requires that the record table of contents list “each item,” it does not explicitly require that attachments to documents be separately identified. *Kane v. City of Beaverton*, 49 Or LUBA 712 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the final decision maker dictates that the city will accept additional written submissions only until a prescribed date, and city staff acts under that dictate to reject a document submitted after the prescribed date, the final decision maker has “rejected” the document, for purposes of determining the content of the record. *Kane v. City of Beaverton*, 49 Or LUBA 712 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government conducts a single combined hearing on two separate permit applications, documents that clearly relate to only one application are not part of the record of the other application. *Kane v. City of Beaverton*, 49 Or LUBA 712 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The requirement in Statewide Planning Goal 1 (Citizen Involvement) that information “necessary to reach policy decisions” be made available to the public does not supercede the attorney/client privilege, and LUBA may not require that the record be supplemented to include information that the city redacts based on the

attorney/client privilege. *Forest Hills Easement Assoc. v. City of Lake Oswego*, 49 Or LUBA 739 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. E-mails and hand-written marginalia are not “minutes” of “meetings conducted by the final decision maker as required by law,” and therefore not part of the record under OAR 661-010-0025(1)(c). *Grabhorn v. Washington County*, 49 Or LUBA 746 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. E-mails from the final decision maker to other persons are not “placed before” the decision maker, and are therefore not part of the record under OAR 661-010-0025(1)(b). Further, administrative contacts between staff and the decision maker concerning scheduling hearings do not constitute “written testimony” or “other written materials” that must be included in the record. *Grabhorn v. Washington County*, 49 Or LUBA 746 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local government record on remand includes the record in the prior appeal that led to remand, unless the prior record is expressly excluded. Even where the issues on remand are narrow, LUBA may require the records from both proceedings in order to understand and resolve challenges to the decision on remand. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 611 (2004).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will not require a local government to digitally enhance an inaudible audio tape to make it audible where the moving party does not explain what such enhancement would involve; a local government must take reasonable steps to make an audiotape audible, but LUBA’s rules do not require that the local government go to extraordinary lengths to restore faulty recordings. *Paterson v. City of Bend*, 48 Or LUBA 614 (2004).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government regulation requires the local appellate body to review the record of the decision under appeal and additionally consider any new evidence submitted into the record at the appeal hearing, the record of decision on appeal becomes part of the appellate body’s record as a matter of law. *Papadopoulos v. Benton County*, 48 Or LUBA 634 (2004).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the evidentiary record has closed and a local appeal to the city council is limited to the evidentiary record that was compiled before the initial local hearings body, an attorney’s reference to a deed to “illustrate” his argument to the city council is not sufficient to place the deed before the decision maker, so that it would become part of the city’s record under OAR 661-010-0025(1)(b). *Nash v. City of Medford*, 48 Or LUBA 647 (2004).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will deny a motion to take evidence under OAR 661-010-0045 to resolve disputes regarding the content of the record that concern testimony and documents placed before the board of commissioners in executive session. LUBA lacks authority to compel the local government to include in the record testimony and

documents placed before the governing body in executive session. *Grabhorn v. Washington County*, 48 Or LUBA 657 (2005).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a planning commission specifically rejects proffered evidence and that evidence is neither submitted by parties to the board of county commissioners on appeal nor forwarded to the board of commissioners by county planning staff, that rejected evidence is not included in the record. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 620 (2004).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Notwithstanding a dispute among the parties about whether the county decision maker properly considered certain evidence after the evidentiary phase of the local proceedings concluded, where the decision maker specifically excluded that evidence from the record, that evidence is not properly included in the local record filed with LUBA. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 620 (2004).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(1)(c) does not necessarily require local governments to include in the record minutes of every meeting of the final decision maker where a development proposal is mentioned. *Wal-Mart Stores, Inc. v. City of Medford*, 47 Or LUBA 650 (2004).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A petitioner may assign error to a hearings officer's refusal to reopen the local record following a LUBA remand, but where it is undisputed that the photographs that petitioner seeks to have added to the local record were not placed before the hearings officer in his initial deliberations or in his deliberations on remand, those photographs are not part of the local record. *Bradley v. Washington County*, 46 Or LUBA 805 (2004).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. When documents are part of a local government planning file that is physically present and visible at a public hearing, but the local government does nothing to indicate that the documents are meant to be part of the record, then those documents are not properly part of the record. *Naumes Properties, LLC v. City of Central Point*, 45 Or LUBA 708 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(2) requires that a local government file a "certified copy of the record." In cases where the original record includes color photographs or other color documents, it is preferable that the local government include color copies of those pages in the copy of the record that is filed with LUBA. Alternatively, it is appropriate for the local government to file a black and white copy of the record and provide the color originals at oral argument. *Oien v. City of Beaverton*, 45 Or LUBA 722 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Notices of changes to annexation boundaries that are required to be sent pursuant to ORS 198.730 are properly included in the record in an appeal of that annexation decision to LUBA. *Miner v. Clatsop County*, 45 Or LUBA 748 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. As long as LUBA and the parties can identify and locate documents in the record with reasonable effort, LUBA will not require the local government to revise the table of contents to more specifically identify the contents of an exhibit in the record that includes numerous separate documents. *1000 Friends of Oregon v. Clackamas County*, 45 Or LUBA 754 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where county staff organized the local record into a series of exhibits that were attached to the hearings officer's decision and provided in that form to the final decision maker, LUBA will not require reorganization of the record to more accurately reflect the chronological progress of the proceedings below. *1000 Friends of Oregon v. Clackamas County*, 45 Or LUBA 754 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA may not consider a written statement that is attached to a petition for review to provide information that is not reflected in the record about what occurred during a local land use proceeding, where petitioner fails to demonstrate that one or more of the grounds for considering extra-record evidence under OAR 661-010-0045(1) applies. *OCAPA v. City of Mosier*, 44 Or LUBA 452 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA does not have authority to order that privileged attorney/client communications be made a part of the record in a LUBA appeal. *Dimone v. City of Hillsboro*, 44 Or LUBA 805 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA does not have authority to order that a city include as part of the record in a LUBA appeal transcripts or minutes that may have been prepared of executive sessions. *Dimone v. City of Hillsboro*, 44 Or LUBA 805 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision is a single ordinance that rezones a number of different properties, the record includes materials placed in front of the final decision maker with respect to any of the properties affected by the decision. That much of the record material may have no bearing on petitioner's property and probably will have no bearing on any issue in the appeal is not a basis to exclude that material from the record. *Manning v. Marion County*, 44 Or LUBA 816 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Audio tapes of planning commission hearings are included in the record before the final decision maker only if they are placed before the final decision maker, specifically incorporated into the record by the final decision maker or automatically included in the record by operation of local code requirements. *Bruce Packing Company, Inc. v. City of Silverton*, 44 Or LUBA 836 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Only the final decision maker can "specifically incorporate" documents into the record by reference, within the meaning of OAR 661-010-0025(1). *Bruce Packing Company, Inc. v. City of Silverton*, 44 Or LUBA 836 (2003).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Notwithstanding that the final decision maker denying petitioners' application for development is the city attorney, letters to the city attorney in his capacity as legal advisor to the city council regarding a negotiated alternative

to petitioner's application relate to a different matter and are not "placed before" the final decision maker "during the course of the proceedings" before the final decision maker within the meaning of OAR 660-010-0025(1)(a). *West Coast Media v. City of Gladstone*, 43 Or LUBA 585 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA's rules provide that only certain documents that are created after a local decision is reduced to writing, signed, and becomes final for purposes of appeal may be included in the local government's record before LUBA. Those documents include: minutes of the meeting where the challenged decision was adopted, copies of post-acknowledgement plan amendment notice to DLCD, and affidavits of published, posted or mailed notice of the challenged decision. *West Side Rural F.P.D v. City of Hood River*, 43 Or LUBA 612 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Findings adopted by reference as part of a local land use decision are properly included in a local record only if they were created and adopted prior to or at the same time as the land use decision that they support. *West Side Rural F.P.D v. City of Hood River*, 43 Or LUBA 612 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Findings supporting a local land use decision are not part of a city's record if they are created after the local decision was reduced to writing, signed and became final for purposes of a LUBA appeal. *West Side Rural F.P.D v. City of Hood River*, 43 Or LUBA 612 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. That a collection of written comments is not internally organized in inverse chronological order is not a basis to require that the local government reorganize the record, where the collection as a whole appears at the approximate chronological location in the record where it should, and no party demonstrates that any divergence from LUBA's rules prejudices their substantial rights. *Stahl v. Tillamook County*, 43 Or LUBA 623 (2002).

27. 3.2 LUBA Procedures/Rules – Record – Content/Form. Where city procedures for adopting legislative amendments require planning commission review and recommendation before those amendments are considered for adoption by the city council, the record at LUBA must include the planning commission record as well as the record before the city council. *No Tram to OHSU, Inc. v. City of Portland*, 43 Or LUBA 634 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents pertaining to a different decision that is not the subject of a LUBA appeal are not part of the record unless those documents were placed before the decision maker during the local land use proceedings that led to the LUBA appeal. *No Tram to OHSU, Inc. v. City of Portland*, 43 Or LUBA 634 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Absent a reason to conclude otherwise, LUBA will assume that documents that are referred to and quoted in the challenged decision were before the final decision maker in reaching her decision. *Wiper v. City of Eugene*, 43 Or LUBA 649 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. While the purpose of the OAR 661-010-0025(4) requirement that the record be in “inverse chronological order” is better served if the record is organized by date of entry rather than document date, where those principles conflict, failure to do so is only a technical violation of LUBA’s rules, absent a showing that a different organization of the record is necessary for the parties’ use or LUBA’s review. *Wiper v. City of Eugene*, 43 Or LUBA 649 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. As used in OAR 661-010-0025(1)(b), the term “placed before” is a term of art and does not merely describe the act of setting documents in front of the decision maker. Legislative decision making often involves less precisely defined procedures for compiling an evidentiary record than quasi-judicial decision making. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 589 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. In an appeal of an environmental assessment prepared as part of a larger state and federal approval process for proposed highway improvements, it is the nature of the environmental assessment process itself and the reasonable expectations of the parties to that process, rather than the conduct of the decision makers, that determines the scope of the record. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 589 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record submitted in an appeal of an environmental assessment for a proposed highway interchange properly includes documents that were created or submitted as part of the process to initiate construction of the interchange, where those documents were maintained such that a reasonable person would expect them to be available to the state and federal decision makers who will ultimately approve the interchange project and the documents are in fact available to the final decision makers. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 589 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. That local government legal counsel brings a document to a hearing and refers to that document in a colloquy with the decision maker is not sufficient to “place” the document before the decision maker within the meaning of OAR 661-010-0025(1)(b). *Homebuilders Assoc. v. Metro*, 41 Or LUBA 616 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The mere inclusion of a written decision from another planning action in the record of a subsequent land use decision is not sufficient in itself to incorporate the entire planning file from the earlier decision into the record of the later decision. *Yeager v. Benton County*, 41 Or LUBA 604 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(1)(d) requires that notices provided throughout “the course of the land use proceeding” be included in the record, including notices from lower tribunals. The rule does not apply to notices from separate planning actions, even if those planning actions are relevant to the challenged decision. *Yeager v. Benton County*, 41 Or LUBA 604 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Written comments are “placed before” the final decision maker within the meaning of OAR 661-010-0025(1)(b) where the notice

of hearing invites written comments and parties to the case submit written comments in the manner set forth in the notice. *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 579 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. If a local government wishes to reject an item and thereby exclude that item from the local record, it must make it clear during the proceedings below that it rejects that item. An ambiguous statement from the county chair that the “hearing is limited to correcting the findings based on the existing record and thus the record is closed” is insufficient to clearly reject written comments that were submitted to the county pursuant to the procedure described in the notice of hearing. *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 579 (2002).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Nonmaterial omissions in a local government’s transcript in the record do not provide a basis to require the local government to submit a more complete transcript, or to substitute a transcript not prepared by the local government. A party may, however, attach a transcript prepared by that party to its own brief. *Terra v. City of Newport*, 39 Or LUBA 811 (2001).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. When the record of a final decision made after remand of an earlier decision from LUBA also includes the record from the earlier decision, but portions of the record from the earlier decision no longer exist, photocopies of the earlier record may be included in the record on remand. If, however, portions of the earlier record are unavailable, re-creations of the earlier record will not be included in the record, if one of the parties objects to the re-creation. *Terra v. City of Newport*, 39 Or LUBA 811 (2001).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-0025(4)(b) the record in a LUBA appeal may be incorporated by reference in the record of a subsequent LUBA appeal. However, where this is done, any parties in the subsequent LUBA appeal who did not receive a copy of the record in the first LUBA appeal must be provided a copy of that record. *Waibel v. Crook County*, 39 Or LUBA 749 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A letter that is addressed to and received by a local decision maker may not be omitted from the record of a variance proceeding because the letter did not specifically include a request that it be included in the local record, where there is no local code requirement that the letter include such a specific request and it is obvious that the letter concerns the requested variance. *Reagan v. City of Oregon City*, 39 Or LUBA 738 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A procedural objection that is filed after the close of the final local hearing, but before the final decision is adopted and written notice of the decision is given, must be included in the local record, where the city’s code allows procedural objections to be filed any time before written notice of the final decision is given. *Reagan v. City of Oregon City*, 39 Or LUBA 738 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-0025(1)(b), evidence that is presented to lower-level local decision making bodies need not be included in the record of the final decision maker unless that evidence is (1) placed before the final decision maker

or (2) incorporated into the record by the final decision maker. *Hubenthal v. City of Woodburn*, 38 Or LUBA 916 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-0025(1)(c), the minutes and tape recordings of lower level local decision makers must be included in the record only if they are incorporated into the record by the final decision maker. *Hubenthal v. City of Woodburn*, 38 Or LUBA 916 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0025(1)(d) requires that the record include all notices of hearing, whether those hearings were conducted by the final decision maker or by lower-level decision makers. *Hubenthal v. City of Woodburn*, 38 Or LUBA 916 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-010-0026(3) provides a way to correct the minutes of the proceedings of the final decision maker; it does not provide a way to correct incomplete or inaccurate minutes of meetings of lower-level local decision makers that were actually placed before or incorporated by the final decision maker. *Hubenthal v. City of Woodburn*, 38 Or LUBA 916 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where documents are placed in the hands of a local government staff person to forward to the local decision maker, pursuant to local procedures, and someone thereafter deletes a portion of the document before it is provided to the local decision maker, the deleted portion has not been “specifically rejected” by the decision maker within the meaning of OAR 661-010-0025(1)(b) and the entire document is properly included in the record. *Dept. of Transportation v. City of Eugene*, 37 Or LUBA 1055 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-025(1)(d), notices of local hearing and affidavits of mailing such notices are to be included in the local record that is filed with LUBA. That a local government may not have committed reversible error by failing to provide a party notice of hearing does not mean the notice of hearing and affidavit of mailing should not be included in the local record. *DLCD v. Douglas County*, 37 Or LUBA 1053 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government has no established procedures for how documents must be submitted into the record in land use proceedings, the test applied by LUBA is whether the conduct of staff and the decision maker could reasonably lead a party to believe the documents are being included in the record. *Bogan v. Coos County*, 37 Or LUBA 1032 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A letter sent to the city requesting notice of applications that the city might file to amend land use regulations affecting large format retail uses is not part of the record of the city’s decision to adopt such regulations, where the letter was sent to the city eight months before the city filed its application and the letter was never placed before the final decision maker during the course of the proceedings below. *Home Depot, Inc. v. City of Beaverton*, 37 Or LUBA 1020 (2000).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government inadvertently re-uses an audio tape of a hearing before the final decision maker, the local government's failure to maintain a taped record of the proceedings may or may not have some bearing on an assignment of error, but that failure can be addressed in an assignment of error without the physical presence of the re-used audio tape in the record. *Rochlin v. City of Portland*, 37 Or LUBA 1005 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. In the context of a record objection, LUBA will rely on the parties' representations regarding the existence or nonexistence of disputed documents, without requiring proponents or opponents to submit affidavits in support of their position, absent some substantial reason to question those representations. *Rochlin v. City of Portland*, 37 Or LUBA 1005 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Minutes of proceedings before the final decision maker that list the persons who testify but contain no summary of the substance of that testimony are incomplete within the meaning of OAR 661-010-0026(3). Where petitioner demonstrates that the omitted summary of testimony is material, LUBA will require that the local government prepare a transcript of relevant portions of the audio tape of those proceedings. *Jackson County Citizens League v. Jackson County*, 37 Or LUBA 1001 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A county attorney's decision to forward certain letters from petitioners' attorney to the county attorney to the board of county commissioners is not sufficient to establish either a common practice that all letters to the county attorney are included in the record or a reasonable expectation on the part of petitioners' attorney that such letters would be included in the local record. *Western States v. Multnomah County*, 37 Or LUBA 987 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioners' attorney's letter to the county's attorney is properly excluded from the record where the letter is not submitted for the record in the manner specified in the notice of hearing, and the letter does not include a request that the letter be included in the record. *Western States v. Multnomah County*, 37 Or LUBA 987 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the bulk of the local government record is made up of attachments to the challenged decision, and the attachments are not arranged chronologically, the local government is not required to include duplicate copies of the decision attachments in the record in chronological order, where the size of the record and the level of detail provided in the record table of contents is such that the attachments can be identified and located with reasonable effort. *Boly v. City of Portland*, 36 Or LUBA 793 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. City transportation plans and maps consulted by the decision makers are not part of the record unless they were submitted into the record below, although such plans and maps may be legislative enactments of which LUBA may take official notice pursuant to OEC 202. *Volny v. City of Bend*, 36 Or LUBA 760 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Any tape recordings of meetings conducted by the final decision maker must be included in the record before LUBA, notwithstanding that the statutes governing such meetings do not require that those meetings be tape-recorded. *Volny v. City of Bend*, 36 Or LUBA 760 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will reject a supplemental record submitted after the petition for review has been filed, where the city fails to explain why the material in the supplemental record is properly part of the local record, and fails to establish that any “unique circumstances” exist justifying untimely filing of the supplemental record. *Terra v. City of Newport*, 36 Or LUBA 754 (1999).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA opinions and local zoning ordinance provisions that were not actually placed before the decision maker during the local proceedings are not properly included in the local record. *North Park Annex Bus. Trust v. City of Independence*, 35 Or LUBA 827 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a county has no adopted procedure for submitting documents prior to permit hearings and (1) a party delivers a document to the county attorney in advance of the hearing, (2) the document includes a request that it be made part of the record and (3) the party verbally requests at the hearing that the document be made part of the record, the party’s actions are sufficient to place the document before the decision maker. *Tri-River Investments Co. v. Clatsop County*, 35 Or LUBA 820 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a party prepares and displays maps at a permit hearing, but does not request that the maps be included in the record and removes the maps at the conclusion of the hearing, the maps are not part of the record. *Tri-River Investments Co. v. Clatsop County*, 35 Or LUBA 820 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a county commissioner hands a party copies of newspaper articles and the party does not request that the articles be included in the record and removes the articles at the conclusion of the hearing, the newspaper articles are not part of the record. *Tri-River Investments Co. v. Clatsop County*, 35 Or LUBA 820 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Absent local provisions to the contrary, only the preliminary plat approval, and not the entire record of the preliminary plat approval, is part of a final PUD plan record. *Santiam Properties v. City of Stayton*, 35 Or LUBA 790 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Geotechnical studies are appropriately included in the record where reference to these studies in the final PUD plan approval order indicates that they were considered by the final decision maker. *Santiam Properties v. City of Stayton*, 35 Or LUBA 790 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A code provision requiring that the local record include all materials submitted by any party and reviewed in reaching the “local

decision under review” does not require that documents that were submitted to and considered by staff be included in the local record, where those documents were not placed before the final decision maker. *Hribernick v. City of Gresham*, 35 Or LUBA 751 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Although a transcript prepared by a party *after* the local proceedings are complete is not considered part of the record under OAR 661-010-0026, where a party-prepared transcript of local proceedings is submitted to the local decision maker before the conclusion of the local proceedings, it is considered part of the record unless it is specifically rejected by the local decision maker. *Sequoia Park Condo Assoc. v. City of Beaverton*, 34 Or LUBA 808 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The requirement of OAR 661-010-0025(4) that the record be organized in inverse chronological order is not blindly applied where the result would be to separate documents that were submitted together. Where the organizational purpose of OAR 661-010-0025(4) is better served by organizing the record based on the date documents were received, LUBA will allow the record to be organized in that manner. *Sequoia Park Condo Assoc. v. City of Beaverton*, 34 Or LUBA 808 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Statements made concerning a pending land use application during “open microphone” segments of meetings that were not part of the local proceedings are not comments submitted “during the course of the proceedings before the final decision maker” and are not part of the record under OAR 661-010-0025(1)(b). *Sequoia Park Condo Assoc. v. City of Beaverton*, 34 Or LUBA 808 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Although items placed in the city’s land use application file are not necessarily part of the record, where the city’s practice is to place the complete file before the local decision maker and the city does not dispute that certain documents were placed in the file and placed before the decision maker, LUBA will assume the documents are part of the local record. *Sequoia Park Condo Assoc. v. City of Beaverton*, 34 Or LUBA 808 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioner claims to have witnessed a disputed document being handed to the city recorder and the minutes include a statement that the disputed document is being left with the city, the disputed document is properly included in the record. *Sequoia Park Condo Assoc. v. City of Beaverton*, 34 Or LUBA 808 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Absent local provisions requiring incorporation, or actual incorporation by the final decision maker, the record of a decision by the governing body does not include tapes of planning commission meetings. *Sequoia Park Condo Assoc. v. City of Beaverton*, 34 Or LUBA 808 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioner’s undeveloped claim that certain documents “were placed in the record” is insufficient to allege that the documents were placed before the local decision maker and not specifically rejected. *Mintz v. Washington County*, 34 Or LUBA 781 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A request that documents be made part of the local record is not sufficient to make those documents part of the local record unless the documents are actually placed before the decision maker. *Mintz v. Washington County*, 34 Or LUBA 781 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The requirement of OAR 661-010-0025(4) that documents in a local government record be arranged in reverse chronological order is not violated where the reasons for placing the documents out of such order are valid and do not affect the amount of effort needed to use the record. *Mintz v. Washington County*, 34 Or LUBA 781 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-010-0025(2) and (3), a local government is not required to include copies of audiotapes with the record served on petitioner. The local government is only required to make the tapes available to petitioner for copy or transcription at petitioner's expense. *Beaman v. City of Hillsboro*, 34 Or LUBA 779 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A local government is not required to include a verbatim transcript of tape recordings in the record if such a transcript was not actually prepared for the proceedings below. *Beaman v. City of Hillsboro*, 34 Or LUBA 779 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A summary of testimony necessarily omits details of that testimony. An objection to a summary of testimony must explain how the summarized testimony is mischaracterized. *Boyer v. Baker County*, 34 Or LUBA 758 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioner identifies several documents in the record where the decision maker refers to a preliminary grading plan, petitioner satisfies his obligation to demonstrate that the preliminary grading plan was placed before the decision maker, notwithstanding that the preliminary grading plan was not included with the original application. *Abadi v. Washington County*, 34 Or LUBA 753 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Tapes of hearings and meetings before the local decision maker already prepared by the local government are properly part of the record under OAR 661-010-0025(1)(c). However, the local government need not create transcripts if they do not already exist. *Sparks v. Polk County and City of Monmouth*, 34 Or LUBA 731 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the text of a local decision on appeal demonstrates that it was based solely on examining the terms and effective date of a local ordinance and the date on which the local record was closed, petitioner does not establish that the record of an earlier proceeding was placed before the decision maker, making it part of the record of the decision on appeal. *Kinzer v. Washington County*, 34 Or LUBA 717 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA rules do not require that the decision maker insert all drafts of its final decision into the record. *Marshall v. City of Yachats*, 34 Or LUBA 713 (1998).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The appellate record of an appeal at LUBA is not properly part of the *local* record on remand unless the LUBA appellate record was placed before the decision maker during the local proceedings on remand. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. In resolving objections to the record, LUBA determines only whether items were included in the record below, not whether those items are relevant to an issue raised by petitioner below. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioner contends a document should have been included in the record and the local government does not explain why the document is not included in the record, LUBA will sustain petitioner’s record objection. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents created after a local government issued the final decision on appeal are not part of the local record. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record of local proceedings following a remand from LUBA includes the record of local proceedings that led to the remand from LUBA, unless the prior record is expressly excluded from the record during the proceedings on remand. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Failure to comply with LUBA’s rules regarding pagination is a serious defect where the record is long and materials cannot be identified with reasonable effort. *D.S. Parklane Development, Inc. v. Metro*, 33 Or LUBA 848 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The requirement of OAR 661-10-025(4)(a)(E) that documents in the record appear in reverse chronological order allows parties to understand how controversies developed and were resolved. *D.S. Parklane Development, Inc. v. Metro*, 33 Or LUBA 848 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where an exhibit comprises many documents, submitted by the same party but which bear no relation to each other, they should be listed separately in the record’s table of contents with separate page numbers. *D.S. Parklane Development, Inc. v. Metro*, 33 Or LUBA 848 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioner’s own transcript of local proceeding audio tapes is not part of the local record. However, if petitioner prepares a transcript of all or some of the audio tapes and attaches it to her petition for review in support of arguments made in the petition, LUBA will consider the transcript if no objection is made to the transcript’s accuracy or completeness. *D.S. Parklane Development, Inc. v. Metro*, 33 Or LUBA 848 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The minutes of meetings held by a local government decision maker’s advisory committees are not included in the record of the local government decision maker’s land use decision, unless those minutes are actually placed before the decision maker. *D.S. Parklane Development, Inc. v. Metro*, 33 Or LUBA 848 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A transcript of local proceedings that is prepared and submitted by petitioner, rather than by the respondent local government, cannot be made part of the local record. However, such a transcript may be attached to the petition for review in support of arguments presented therein. *Trademark Construction Inc. v. Marion County*, 33 Or LUBA 842 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will grant a motion to strike evidence attached to a petition for review where the evidence is neither included in the local record nor properly placed before LUBA through an evidentiary hearing. *St. Johns Neighborhood Assn v. City of Portland*, 33 Or LUBA 836 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the planning commission is not authorized by the city council to make a final decision, it is not a “governing body” under OAR 661-10-010(4), and OAR 661-10-025(1)(c) does not require the planning commission minutes be included in the record. However, minutes placed before the city governing body are properly included in the record under OAR 661-10-025(1)(b). *City of Gresham v. City of Wood Village*, 33 Or LUBA 779 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Inaccuracies in the written minutes of a public hearing are material only if the party objecting to the inaccuracies in the record establishes that the statements at issue relate to evidence that will be relevant to issues on appeal. *Winkler v. City of Cottage Grove*, 33 Or LUBA 776 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Without evidence that a disputed item was actually received by the decision maker or a person authorized to receive evidence on the decision maker’s behalf, there is no basis for rejecting the city’s representation that an item was not received or placed before the decision maker. *Opp v. City of Portland*, 33 Or LUBA 772 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the local governing body makes the final decision and only had before it the minutes of planning commission deliberations, LUBA may not order that the minutes be corrected based on a transcript of the planning commission deliberations that was not available to the governing body. *Carlson v. Benton County*, 33 Or LUBA 767 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-10-025(1)(c) requires that the “minutes * * * of the meetings conducted by the governing body” be included in the record, but does not require that the minutes of planning commission deliberations be included where the planning commission is not authorized to render a final decision and for that reason is not properly considered a “governing body.” *Carlson v. Benton County*, 33 Or LUBA 767 (1997)

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA will not infer that a county’s finding was intended to be read in a manner that conflicts with the finding’s express language. *Koo v. Polk County*, 33 Or LUBA 487 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. ORS 197.835(11)(b) does not allow LUBA to draw inferences from the record that are either conflicting or not clearly evident from the county’s findings or the record. Nor does it allow LUBA to disregard or alter the county’s findings. *Koo v. Polk County*, 33 Or LUBA 487 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a city’s motion to supplement the record with notice of adoption of ordinance will not supplement or complete the challenged decision in any way that is challenged by petitioner, the motion will be denied due to its lack of bearing on the merits of the appeal. *Western PCS, Inc. v. City of Lake Oswego*, 33 Or LUBA 369 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Even if county staff consulted certain files prior to issuance of a contested grading permit, that would not make those files part of the local record. Therefore, petitioner’s allegations concerning such consultation provide no basis for an evidentiary hearing to establish that those files are part of the grading permit record on appeal. *Ceniga v. Clackamas County*, 33 Or LUBA 261 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Although a record is always “accepted” upon delivery, in that it is date-stamped and filed by LUBA’s staff, it is not fully “accepted” for purposes of OAR 661-10-025(4)(a) as to form or content until it is either received by the Board, when there is no objection, or “settled” by the Board pursuant to OAR 661-10-026(6), when there is some objection. *Mar-Dene Corporation v. City of Woodburn*, 32 Or LUBA 481 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The primary purpose of the specifications set out in OAR 661-10-025(4) for records filed with LUBA is to ensure that the record is usable by the parties and the Board. Where an exhibit in the record contains more than 700 pages unindexed and in no particular order, LUBA will sustain a record objection on the basis that not all documents can be identified and located with reasonable effort. *Mar-Dene Corporation v. City of Woodburn*, 32 Or LUBA 481 (1997).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Although documents specifically rejected by a local government during its proceedings are not part of the local government record, the erroneous rejection of documents may provide a basis for reversal or remand. A party that wishes to challenge in its brief the propriety of the decision to exclude particular documents may request an evidentiary hearing before filing its brief. *Village Properties, L.P. v. City of Oregon City*, 32 Or LUBA 475 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Planning documents not placed before the city decision maker during the local proceedings are not part of the record, but LUBA may take official notice of local government enactments under OEC 202(7). *Downtown Community Assoc. v. City of Portland*, 31 Or LUBA 574 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. While words spoken at a county hearing are part of the record, transcripts not prepared by the county are not properly part of the local record, but may be attached to a party’s brief in support of the arguments therein. *Fralely v. Deschutes County*, 31 Or LUBA 566 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the record establishes that the county adopted nine conditions of approval, but inadvertently failed to include those conditions in the record transmitted to LUBA, the county will be allowed to supplement the record with the conditions. *Brown v. Union County*, 31 Or LUBA 551 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local record includes not only materials submitted to the local decision maker during the public hearing process, but also other materials placed before the local decision maker prior to adoption of the final decision. Whether the local government satisfied statutory or local ordinance requirements in accepting evidence after the local hearings process does not determine whether those documents were made part of the record. *Nicholson/Keever v. Clatsop County*, 31 Or LUBA 535 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Items placed before and made part of the record during the local proceedings are not subject to amendment on appeal to this Board. Local governments may not amend a document in the record in order for it to conform to another document in the record. *Nicholson/Keever v. Clatsop County*, 31 Or LUBA 535 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. In an appeal of a fill and grading permit, materials that were sent to the city planning director but that were not placed before the code analyst who issued the permit are not part of the record. *Friends of Eugene v. City of Eugene*, 31 Or LUBA 532 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. When a disputed videotape is included in the record of the local government, and petitioners do not object to the record as submitted, petitioners’ argument that the local government improperly refused to accept the videotape into the record is without merit. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A local government may accept new material into the record after holding a public hearing by accepting it before the record is closed, by reopening the record formally, or by its conduct. However, a local government is not required to accept new material into the record after it has formally closed the record. *Richards-Kreitzberg v. Marion County*, 30 Or LUBA 476 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the county holds a public hearing on remand from LUBA, but does not reopen the record at that hearing, a letter sent from petitioners to the board of commissioners after the hearing and prior to the adoption of the final decision is not part of the record. *Richards-Kreitzberg v. Marion County*, 30 Or LUBA 476 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. That a party believes a document should have been placed into the record does not establish that it is part of the record. Nor does a

representation by staff that a document was entered into the record establish that it was, in fact, entered into the record. *DeShazer v. Columbia County*, 30 Or LUBA 472 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioners requested that the record of proceedings before the planning commission be included in the record before the board of commissioners, that request was discussed at the public hearing before the board and not rejected, and the secretary to the board acknowledged that she would make copies of the requested documents for the board, those documents are properly part of the record. *DeShazer v. Columbia County*, 30 Or LUBA 472 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Whether an item was made an official exhibit by the local decision maker does not determine whether it was placed before and not rejected by the decision maker. *DeShazer v. Columbia County*, 30 Or LUBA 472 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioner's request at a local proceeding that a specific document be adopted as part of the record does not suffice to make that document part of the record if it is not actually placed before the decision maker. *McKenzie v. Multnomah County*, 30 Or LUBA 461 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Items are placed before the local decision maker if (1) they are physically placed before the decision maker prior to the adoption of the final decision; (2) they are submitted to the decision maker through means specified in local regulations or through appropriate means in response to a request by the decision maker for submittal of additional evidence; or (3) local regulations require that the item be placed before the decision maker. *McKenzie v. Multnomah County*, 30 Or LUBA 461 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The existence of a county code section requiring hillside development permits has no bearing on whether a slope hazard map is part of the local record. *McKenzie v. Multnomah County*, 30 Or LUBA 461 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The relevance or probative value of documents has no bearing on whether they are part of the local record. *McKenzie v. Multnomah County*, 30 Or LUBA 461 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Because the record is not limited to materials submitted to the decision maker prior to the close of the final public hearing, but includes all materials placed before the decision maker prior to the adoption of the final decision, petitioner's comments on proposed findings, accepted by the county commissioners after the final public hearing but before the adoption of the final decision, should be included in the record. *Leathers v. Marion County*, 30 Or LUBA 437 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision quotes two sentences from a local government order on a different land use application, but does not express any intent to incorporate other portions of that order, only the two sentences are incorporated into the local record as findings, not the remainder of the order. *Rochlin v. City of Portland*, 29 Or LUBA 609 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The relevance or probative value of documents has no bearing on whether they are part of the local record. *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Although a decision may incorporate other documents by reference, it cannot incorporate future enactments or the legislative history of those future enactments. *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local record includes only items placed before, and not rejected by, the local decision maker. When documents are prepared after the adoption of the decision on appeal, those documents are not part of the local government record. *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A document of which LUBA takes official notice does not thereby become part of the local record which may provide evidentiary support for the challenged decision. *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. With the exception of the challenged decision, minutes and tapes of proceedings below, and notices of local government hearings and decisions, an item becomes part of the local record if (1) it is physically placed before (and not rejected by) the decision maker prior to adoption of the final decision; (2) it is submitted to the decision maker through means specified in local regulations or in a request by the decision maker for submittal of additional evidence; or (3) local regulations require that the item be placed before the decision maker. *Terrace Lakes Homeowners Assoc. v. City of Salem*, 29 Or LUBA 601 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The fact that letters concerning a land use application were mailed to local government staff members does not, of itself, mean the letters are part of the local record. *Terrace Lakes Homeowners Assoc. v. City of Salem*, 29 Or LUBA 601 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A document is not part of the local record simply because it is located somewhere in the local government's files. *Terrace Lakes Homeowners Assoc. v. City of Salem*, 29 Or LUBA 601 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-10-025(1)(c), tape recordings of meetings conducted by the governing body must be included in the local government record, if such recordings are made. *Ramsay v. Linn County*, 29 Or LUBA 559 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where audio tapes are part of the record, a local government is not required to demonstrate such tapes are difficult to duplicate, to be able retain them until the date of oral argument under OAR 661-10-025(2). *Ramsay v. Linn County*, 29 Or LUBA 559 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local government record submitted in a prior LUBA appeal, which led to remand of the challenged decision, is properly included in the local government record submitted to LUBA in a subsequent LUBA appeal of the local government’s decision on remand. However, objections to the content of the local government record in the prior appeal, which could have been made in the prior appeal but were not, may not be asserted in the subsequent appeal. *East Lancaster Neigh. Assoc. v. City of Salem*, 29 Or LUBA 554 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision is a decision by a local governing body not to accept petitioner’s local appeal, under OAR 661-10-025(1)(d) the local government’s notice of the planning commission decision that is the subject of petitioner’s local appeal is properly included in the record, regardless of whether it was actually placed before the governing body. *Cummings v. Tillamook County*, 29 Or LUBA 550 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Other than the challenged decision itself (OAR 661-10-025(1)(a)), minutes and tapes of the proceedings below (OAR 661-10-025(1)(c)), and notices of local government hearings and decisions (OAR 661-10-025(1)(d)), items are part of the record only if they were placed before, and not rejected by, the local government decision maker (OAR 661-10-025(1)(b)). *Cummings v. Tillamook County*, 29 Or LUBA 550 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A document composed entirely of 8.5 X 11-inch sheets of paper is not a “difficult to duplicate” document that can be retained until oral argument under OAR 661-10-025(2). *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision incorporates a particular document by reference, under OAR 661-10-025(1)(a) that document is properly included in the record, because it was adopted as part of the decision. *ONRC v. City of Oregon City*, 29 Or LUBA 547 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local advisory committee’s charge was broader than the subject of a challenged legislative decision by the governing body, and the committee performed its work independently of the governing body, the record of meetings between members of the governing body and the advisory committee that occurred prior to the initiation of the legislative proceeding leading to the challenged decision is not part of the record of the governing body’s legislative proceeding. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 541 (1995).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the record shows the local government conducted the proceeding leading to the challenged decision modifying an approved PUD as a separate permit proceeding initiated by a separate PUD modification application, under OAR 661-10-025(1)(b), the record includes only those items that were placed before the local decision maker during the course of the proceedings initiated by the modification application. *ONRC v. City of Oregon City*, 28 Or LUBA 775 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Items are placed before the decision maker if (1) they are physically placed before the decision maker prior to the adoption of the final decision; (2) they are submitted to the decision maker through means specified in local regulations or through appropriate means in response to a request by the decision maker for the submittal of evidence; or (3) local regulations require that the item be placed before the decision maker. *ONRC v. City of Oregon City*, 28 Or LUBA 775 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA cannot compel a local government to make minutes or a transcript of an executive session a part of the local record submitted in a LUBA review proceeding. If minutes have been prepared and not disclosed, the remedy is to seek an order from the circuit court that the minutes be made public. *McCrary v. City of Talent*, 28 Or LUBA 773 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Memoranda mailed to all owners of property in the area affected by a proposed legislative rezoning, from the local government planning department or a citizen task force, are not part of the local record if they were not placed before the local decision maker. *Churchill v. Tillamook County*, 28 Or LUBA 755 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. That a compilation of questionnaire responses is in the record does not mean that the individual responses (*i.e.*, the data) from which that compilation was prepared are part of the record, if the individual responses were not themselves placed before the decision maker. *Churchill v. Tillamook County*, 28 Or LUBA 755 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under OAR 661-10-025(4)(a)(B), the record table of contents must list as an exhibit *each* large document or map retained by the local government until the date of oral argument pursuant to OAR 661-10-025(2). *Churchill v. Tillamook County*, 28 Or LUBA 755 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Regardless of whether it was placed before the decision maker, the notice of the challenged decision given by respondent, including a list of persons to whom such notice was provided, is properly part of the record of the local proceedings. *Churchill v. Tillamook County*, 28 Or LUBA 755 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Items “included as part of the record during the course of the governing body’s proceeding,” as provided in OAR 661-10-025(1)(b), are those items actually placed before, and not specifically rejected by, the local decision maker during the local proceeding. *Champion v. City of Portland*, 28 Or LUBA 742 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 660-10-025(1)(c) requires the local record submitted to LUBA to include minutes and tape recordings of the proceedings conducted by the governing body, regardless of whether such minutes and tapes were actually placed before the decision maker below. Under OAR 660-10-010(4), “governing body” includes a commission whose decision would become the local government’s final decision if no local appeal were filed. *Champion v. City of Portland*, 28 Or LUBA 742 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. In the absence of local regulations to the contrary, oversize aerial photographs permanently affixed to the walls of a local government hearing room do not become part of the record simply because they are in the view of the decision maker and are referred to in testimony during a local land use hearing. *Wicks v. City of Reedsport*, 28 Or LUBA 739 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Under amendments to LUBA's rules adopted June 22, 1994, tape recordings of the proceedings of the local government decision maker(s) are required to be included in the local record. A local government may retain such tapes until the time of oral argument before LUBA, but must list such retained tapes as exhibits on the table of contents to the record. *Champion v. City of Portland*, 28 Or LUBA 730 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government designates a particular planner as the person to whom comments on a proposal should be directed, comments so directed are effectively placed before the local government decision maker and are required to be included in the local record. *Home Builders Assoc. v. City of Portland*, 28 Or LUBA 725 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. That the author of a letter subsequently abandoned the position it expressed in the letter has no bearing on whether that letter is part of the local record. *Home Builders Assoc. v. City of Portland*, 28 Or LUBA 725 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Tapes of meetings conducted by a local government decision maker during the proceedings below are required to be included in the local record. A local government may retain such tapes until the time of oral argument before LUBA, but must list such retained tapes as exhibits on the table of contents to the record. OAR 661-10-025(1)(c), (2), (4)(a)(B) *McNamara v. Union County*, 28 Or LUBA 722 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Neither tape recordings of local proceedings that were not made by the local government as part of its official record of proceedings, nor transcripts made from such unofficial tape recordings, are properly included in the local record. *Carlson v. City of Dunes City*, 28 Or LUBA 719 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government decision maker authorizes the withdrawal of a challenged local government decision for reconsideration, pursuant to ORS 197.830(12)(b), that decision is reflected in the Notice of Withdrawal filed with LUBA, and that notice is part of the local record of the proceedings leading to the local government's decision on reconsideration. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Letters to and from LUBA concerning the filing of a local government decision on reconsideration and refiling of a notice of intent to appeal, pursuant to ORS 197.830(12)(b), postdate the adoption of the challenged decision on reconsideration and, therefore, are not part of the *local* record. They are, however, part of LUBA's record. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Items that were not placed before the local decision maker during the proceedings on the development application leading to the appealed decision, but rather were submitted to the decision maker only at a workshop on general issues concerning the development of an area including the subject property, are not part of the local record. *ONRC v. City of Oregon City*, 27 Or LUBA 726 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where there is no contention local regulations provide that submitting items to the local government’s attorney is effective to place those items before the local decision maker, and no contention the disputed letter was sent to the local government’s attorney in response to a specific request by the decision maker for additional evidence or argument, a letter sent to the local government’s attorney is not part of the record unless that letter was actually placed before the decision maker. *ONRC v. City of Oregon City*, 27 Or LUBA 726 (1996).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record of a challenged local governing body decision includes the record of the planning commission proceeding on the subject application if either (1) the planning commission record was actually placed before the governing body, or (2) local code provisions require that the planning commission record be made part of the record before the governing body as a matter of law. *Salem Golf Club v. City of Salem*, 27 Or LUBA 715 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where documents are prepared or revised after the adoption of the decision appealed to LUBA, the documents or revisions are not part of the local government record. *Jackman v. City of Tillamook*, 27 Or LUBA 704 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. OAR 661-10-025(1)(c) does not require that minutes of a “task force” meeting at which less than a quorum of the members of a local government decision making body participated be included in the record, if no minutes were prepared, because minutes of such a meeting are not “required by law.” *Jackman v. City of Tillamook*, 27 Or LUBA 704 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government initially maintains a single consolidated record in conjunction with two related quasi-judicial land use applications, but later bifurcates the local record into separate records, without providing notice to the parties, documents submitted by the parties will be included in the record of both proceedings. *ONRC v. City of Seaside*, 27 Or LUBA 679 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the applicant submits a new application following remand by LUBA of a decision approving an earlier application, a local government is under no obligation to include the record of the prior application or to provide explicit notice that parties have to submit evidence from the previous record that they wish the local government to consider in reviewing the new application. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision states the decision maker “adopts” a certain document and “makes it part of” the findings, that

document is incorporated by reference into the findings and, under OAR 661-10-025(1)(a), is part of the local record, as findings. *Bates v. Josephine County*, 27 Or LUBA 673 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a staff report in the record indicates a particular document was submitted to the local planning commission at or prior to its hearing on the subject comprehensive plan and zoning map amendment, and no party contends the record of the planning commission proceedings is not properly included in the record of the challenged decision by the governing body, the document is part of the local record in an appeal to LUBA. *Bates v. Josephine County*, 27 Or LUBA 673 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where planning commission hearings are part of the local government decision making process concerning a proposed comprehensive plan or zoning ordinance amendment, minutes of those proceedings, as required by law, are part of the record of the challenged decision. OAR 661-10-025(1)(c). *Bates v. Josephine County*, 27 Or LUBA 673 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A transcript of local proceedings that was prepared and submitted by petitioner, rather than by the respondent local government, cannot be made part of the local record. However, petitioner may attach the transcript, or relevant portions thereof, to the petition for review, in support of arguments made therein. *Bates v. Josephine County*, 27 Or LUBA 673 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. An objector may not simply assume that all of the attachments to a letter are part of the local record simply because some of the attachments are included in the record. The objector must establish the disputed attachments were actually placed before the local decision maker. *Kaady v. City of Cannon Beach*, 27 Or LUBA 664 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local record consists of those items placed before, and not rejected by, the local decision maker. Where petitioner contends the applicant asked to withdraw certain documents it submitted to the local decision maker, but does not argue the local decision maker granted that request or otherwise rejected the disputed documents, LUBA has no basis for concluding the documents are erroneously included in the local record. *Murphy Citizens Advisory Comm. v. Josephine County*, 27 Or LUBA 651 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. If a local government wishes to exclude the record of the previous local proceeding on the same development application that led to local proceedings after remand by LUBA, it must expressly do so. Otherwise, in an appeal to LUBA from the local government decision on remand, the record of the previous local proceeding will be considered part of the record of the local government decision on remand. *Murphy Citizens Advisory Comm. v. Josephine County*, 27 Or LUBA 651 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. In the absence of established procedures for formally admitting documents displayed during a local government land use hearing into the record, wetland maps that were displayed during a local hearing and discussed in

the testimony of local government staff are part of the record of the local proceedings. *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 645 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local decision maker's order denying rehearing (1) indicates evidence submitted with the request for rehearing was considered only for the limited purpose of determining whether to grant the request for rehearing, and (2) does not amend or add to the original decision, the evidence submitted with the request for rehearing, although in the local record submitted to LUBA, is not part of the evidentiary record supporting the challenged decision. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where an appeal challenges (1) a letter concerning whether an amended version of a local code provision applies to two previously approved subdivisions, and (2) a letter rejecting petitioner's attempt to appeal the first letter locally, references in petitioner's inquiry and in the challenged letters to the two prior subdivision approvals do not, in and of themselves, operate to make the entire record of those subdivision proceedings part of the record of the appeal. *Forest Park Neigh. Assoc. v. City of Portland*, 26 Or LUBA 642 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a video tape was brought to a hearing but due to a mechanical malfunction was not played, and the video tape was neither offered to nor left with the local government decision maker, the tape was not placed before the decision maker and is not part of the local government record. *Sanchez v. Clatsop County*, 26 Or LUBA 631 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The primary purpose of the specifications set out in OAR 661-10-025(4) for records filed with LUBA is to ensure the record is usable by the parties and that all documents in the record can be identified and located with reasonable effort. Arranging the record in chronological order, rather than inverse chronological order as required by OAR 661-10-025(4)(a), has no material bearing on this primary purpose. *Sanchez v. Clatsop County*, 26 Or LUBA 631 (1994).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local record includes those items placed before, and not specifically rejected by, the local government decision maker. Thus, where a circuit court transfers an appeal to LUBA, the record of the circuit court proceedings is not part of the local record subject to LUBA's review. *Kaady v. City of Cannon Beach*, 26 Or LUBA 614 (19/93).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision was made by the local governing body, after a *de novo* review of a planning commission decision, but the record of the planning commission proceedings was not actually placed before the governing body, the planning commission's record is not part of the local record subject to LUBA review. *Matrix Development v. City of Tigard*, 26 Or LUBA 606 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where documents referenced in findings were not placed before the local decision maker, but rather were reviewed by local government staff who communicated the results of such review to the decision maker, the

documents are not part of the local record. *Matrix Development v. City of Tigard*, 26 Or LUBA 606 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Items submitted to the decision maker after the close of the evidentiary hearing are properly included in the record before LUBA, unless the decision maker specifically rejected those items prior to making its final decision. *Matrix Development v. City of Tigard*, 26 Or LUBA 606 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local record includes items placed before, and not rejected by, the decision maker. Simply referring to a document during the local government proceedings does not make that document part of the record. *Henderson v. Lane County*, 26 Or LUBA 603 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioner’s references to telephone conversations between petitioner’s employee and city employees, in a letter protesting dismissal of petitioner’s local appeal, are insufficient to make transcripts of those conversations part of the local record, where no transcripts of those conversations were actually placed before the local decision maker. *Restaurant Management N.W. v. City of Portland*, 25 Or LUBA 824 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where it is clear from the local record that the local government rejected a letter during the proceedings below, that letter is not part of the local record. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 821 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the local decision maker only considers rejecting particular evidence, but does not actually reject such evidence, that evidence must be included in the local record submitted to LUBA. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 821 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the respondent includes documents in the record and takes the position that those documents were actually placed before the decision maker during the local proceedings, LUBA relies on the objecting party to offer some reason for questioning respondent’s position. *McPeek v. Coos County*, 25 Or LUBA 805 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioner’s objection that a partial transcript, prepared and submitted by respondent in response to record objections by an intervenor, should be more extensive provides no basis for ordering the local government to provide such an expanded transcript, where petitioner does not explain, as required by OAR 661-10-026(3), why the minutes included in the record are inadequate to provide the desired information. *McPeek v. Coos County*, 25 Or LUBA 805 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged local government decision is not included in the record submitted to LUBA, LUBA must remand the decision. *Lathrop v. Wallowa County*, 25 Or LUBA 693 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. References in documents submitted during an earlier legislative proceeding to a subsequent legislative proceeding do not make the documents submitted during the earlier legislative proceeding part of the record of the subsequent legislative proceeding. *Bicycle Transportation Alliance v. Washington County*, 25 Or LUBA 798 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents originally submitted during one legislative proceeding are properly included in the record of a subsequent legislative proceeding, if they were actually placed before the decision maker during that subsequent legislative proceeding. *Bicycle Transportation Alliance v. Washington County*, 25 Or LUBA 798 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A local government staff memorandum concerning notice provided during a legislative proceeding is not properly included in the record of that proceeding, where the memorandum was created two months after the challenged decision was adopted. However, submission of the memorandum may be allowed in the event of an evidentiary hearing, pursuant to ORS 197.830(13)(b) and OAR 661-10-045, to demonstrate that required notices were given. *Bicycle Transportation Alliance v. Washington County*, 25 Or LUBA 798 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The relevant inquiry in determining whether documents are properly included in the record is whether the documents were actually placed before the local government decision maker during the local proceedings leading to the challenged decision. LUBA does not require a showing that the decision maker actually examined each document placed before it. *Bicycle Transportation Alliance v. Washington County*, 25 Or LUBA 798 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the local proceedings leading to a challenged legislative land use decision included a number of separate proceedings, documents placed before the decision makers during each of those separate proceedings are properly included in the record at LUBA. *Bicycle Transportation Alliance v. Washington County*, 25 Or LUBA 798 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Staff notes that were used in developing a staff recommendation, but that were not themselves placed before the local decision maker, are not part of the local record. *Churchill v. Tillamook County*, 25 Or LUBA 796 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local record is not limited to materials submitted to the decision maker prior to the close of the public hearing. Items submitted to the local decision maker, and not rejected prior to its adoption of the challenged decision, are part of the local record that must be transmitted to LUBA. *Rochlin v. Multnomah County*, 25 Or LUBA 783 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Absent local regulations that specifically allow submittal of evidence to the local decision maker through incorporation by

reference, a request to incorporate items by reference is not sufficient to make the requested items part of the local record. *Salem Golf Club v. City of Salem*, 25 Or LUBA 768 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government specifically denies a request that it take official notice of certain items and incorporate them into the local record, those items are not part of the local record. *Salem Golf Club v. City of Salem*, 25 Or LUBA 768 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Mailing a document concerning certain property to a local government official, at a time when an appeal of a local decision concerning that property is pending before LUBA, does not, of itself, make that document part of the record of subsequent local proceedings conducted after remand of the appealed decision by LUBA. *DLCD v. Klamath County*, 24 Or LUBA 643 (1993).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. To be part of the local record, documents must be placed before the local decision maker. Simply referring to documents does not place such documents before the local decision maker. *Mannenbach v. City of Dallas*, 24 Or LUBA 618 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. While the spoken word is considered part of the local record, LUBA’s rules do not require that a local government submit tapes of its local proceedings. *Mannenbach v. City of Dallas*, 24 Or LUBA 618 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local government record does not include evidence that is specifically rejected by the local government during the local proceedings. That such evidence may have been erroneously rejected may provide a basis for reversal or remand, but it has no bearing on the contents of the record. *Glisan Street Assoc. v. City of Portland*, 24 Or LUBA 600 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. It is not enough to allege that a document can be found in some file located in the courthouse; the local record consists only of documents actually placed before, and not specifically rejected by, the local government decision maker. *West Amazon Basin Land Owners v. Lane County*, 24 Or LUBA 597 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record includes materials placed before the local decision maker prior to the adoption of a final decision. It is not limited to materials submitted to the local decision maker prior to the close of the public hearing or the making of a tentative decision. *Joines v. Linn County*, 24 Or LUBA 588 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioners simply assumed that a letter sent to a city planner concerning the local proceedings would be placed before the city decision maker, but the letter was not placed before the city decision maker, the letter is not part of the local record. *Terra v. City of Newport*, 24 Or LUBA 579 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The presence of blank spots on an audio tape of a public hearing does not provide a basis for allowing the petitioner in a LUBA

proceeding to attempt to supply the information that should be reflected on the blank portions of the tape, by an affidavit not placed before the local decision maker. *Giesy v. Benton County*, 24 Or LUBA 586 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A party may not fail to object to the record submitted by the local government in a LUBA proceeding and thereafter attach documents to its brief that it believes should be included in the record. *Mercer v. Josephine County*, 23 Or LUBA 608 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. For purposes of determining the composition of the local record of a decision on a permit application, the local proceedings begin when the permit application is submitted. *Forest Highlands Neigh. Assoc. v. Lake Oswego*, 23 Or LUBA 723 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local record consists of those items physically placed before and not specifically rejected by the local decision maker. *Forest Highlands Neigh. Assoc. v. Lake Oswego*, 23 Or LUBA 723 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where minutes of the local government proceedings demonstrate that a document was specifically rejected by the local government decision maker, the document is not part of the local record. *Mulholland v. City of Roseburg*, 23 Or LUBA 720 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where evidence is submitted to a local government decision maker after the close of the evidentiary hearing, and the decision maker votes not to reopen the record to accept such evidence, that evidence is specifically rejected by the decision maker and, therefore, is not a part of the local record to be submitted to LUBA. *Adler v. City of Portland*, 23 Or LUBA 692 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents specifically rejected by a local government during its proceedings are not part of the local government record. *Wilson Park Neigh. Assoc. v. City of Portland*, 23 Or LUBA 688 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the city charter identifies the City Auditor as custodian of all records of city council proceedings, and petitioners neither cite city regulations recognizing the delivery of documents concerning pending city council proceedings to the offices of the mayor or individual council members as a means of submitting documents for the record, nor claim the city council specifically authorized use of such a procedure, the delivery of documents to the offices of the mayor and city council members does not constitute placing those documents before the city council. *Wilson Park Neigh. Assoc. v. City of Portland*, 23 Or LUBA 688 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the challenged decision states the final local decision maker took “notice” of the record of a lower level decision maker, and the letter of transmittal to the final decision maker states it is transmitting the record from the lower level decision maker, the record before such lower level decision maker was “placed before”

the final decision maker, and must be included in the local record submitted to LUBA. *Veatch v. Wasco County*, 23 Or LUBA 676 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government concedes that certain documents were placed before the local decision maker during the proceeding below, and the parties cite nothing establishing that the local government specifically rejected the documents, the documents are part of the local record. *Heiller v. Josephine County*, 23 Or LUBA 672 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The general rule is that the record compiled at one stage of a local government land use proceeding must actually be placed before the decision maker in subsequent stages of that land use proceeding, if that earlier record is to become part of the record subject to review by LUBA. *Leonard v. Union County*, 23 Or LUBA 664 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where local code provisions require that the record of proceedings before initial decision makers be placed before the final decision maker the record of those earlier proceedings automatically become part of the record subject to review by LUBA, without the necessity of actually placing the record compiled before initial decision makers before the final decision maker. *Leonard v. Union County*, 23 Or LUBA 664 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a participant *requests* that the local decision maker include certain items in the record, but does not actually place those items before the decision maker, that request, at least in the absence of an affirmative response by the decision maker, is no more than a reference to those items in the participant's testimony and does not make those items part of the local record. *Ramsey v. City of Portland*, 22 Or LUBA 845 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Local ordinance provisions which *require* certain items to be placed before the governing body have the effect of making those items part of the record of the governing body's proceedings, irrespective of whether the items were *physically* placed before the governing body. *Schrock Farms, Inc. v. Linn County*, 22 Or LUBA 836 (1992).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. An item is part of the record only if it was actually *placed before* the local decision maker. Whether an item is *relevant* to the decision maker's decision has no bearing on whether that item is in the record. *Adkins v. Heceta Water District*, 22 Or LUBA 826 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Materials placed before the local decision maker are part of the record only if they were submitted during the proceeding leading to the appealed decision. Where a local government conducts two separate proceedings, a quasi-judicial proceeding on an application and a legislative proceeding to consider adoption of a regulation governing such applications, items are not part of the record of the appealed regulation simply because they are part of the record of the application proceeding. *Adkins v. Heceta Water District*, 22 Or LUBA 826 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. To properly be included in the local record submitted to LUBA, items must have been placed before, and not specifically rejected by, the local decision maker. Items specifically rejected by the local decision maker during its proceedings are not part of the local record. *Silani v. Klamath County*, 22 Or LUBA 823 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioners' allegation that the job description of the county appeals secretary should be included in the local record is irrelevant to determining whether it is a part of the local record. Where the disputed job description was not placed before the local decision maker, LUBA will not require that it be included in the local record. *Breivogel v. Washington County*, 22 Or LUBA 813 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. To properly be included in the local record submitted to LUBA, items must have been placed before, and not specifically rejected by, the local decision maker. *Weeks v. Tillamook County*, 22 Or LUBA 810 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the local code does not specifically allow submittal of documents to the local decision maker through incorporation by reference, and the documents in question were not actually placed before the local decision maker during the proceedings below, the documents are not part of the local record. *Schatz v. City of Jacksonville*, 22 Or LUBA 799 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record is not limited to materials submitted to the decision maker prior to the close of the public hearing, but rather includes all materials placed before the decision maker prior to the adoption of the final decision. *Schatz v. City of Jacksonville*, 22 Or LUBA 799 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Video tapes of local proceedings not made by the local government as part of the official record of its proceedings are not properly included in the local government record. *Toth v. Curry County*, 21 Or LUBA 595 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents actually placed before the local decision maker must be included in the local record. That a document placed before the decision maker contains inaccuracies provides no basis for excluding the document from the record. *Gray v. Clatsop County*, 21 Or LUBA 574 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioners do not contend a list naming persons who received individual notice of planning commission or board of commissioners hearings was actually compiled by the county or placed before either body, such a list is not part of the local record. *Gray v. Clatsop County*, 21 Or LUBA 574 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A sketch prepared by a member of the decision making body during its deliberations and referred to in the comments of that member, but not shown to the other members, was not actually placed before the decision making body for inclusion in the record. *Schmaltz v. City of Hood River*, 21 Or LUBA 563 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the local code provides that “legislative actions include a public hearing by the [planning] commission,” it requires the record of the public hearing before the planning commission to be placed before the governing body and be made part of the record of the final legislative action. *Union Gospel Ministries v. City of Portland*, 21 Or LUBA 557 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where documents referenced in local government findings were not placed before the local decision maker, but rather were reviewed by local government staff who communicated the results of such review orally to the decision maker, the documents are not part of the local record. However, the work sessions at which such oral communications occurred are part of the local proceedings leading to the appealed decision, and audiotapes of such work sessions are properly part of the record. *Eckis v. Linn County*, 20 Or LUBA 589 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the audiotape of a portion of a local hearing is blank, making preparation of a transcript impossible, LUBA will not grant a motion to supplement the record with the witness’ written statement, if that written statement was not placed before the local decision maker during the local proceedings. *Hale v. City of Beaverton*, 20 Or LUBA 584 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the clerk of the council is the official custodian of the record of city council proceedings, it is customary to submit documents to the clerk of the council, and it is not claimed that the council authorized planning staff to receive documents, submitting a document to a planning staff member during a city council hearing does not constitute placing the document before the city council. *Blatt v. City of Portland*, 20 Or LUBA 572 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government conducts the proceeding culminating in the adoption of a corrective program under ORS 197.530 as a separate proceeding, not as a continuation of a proceeding leading to the adoption of a moratorium under ORS 197.520, the record of the decision to adopt a corrective program does not include the record of the decision to adopt a moratorium, unless the moratorium record was placed before the decision maker during the corrective program proceeding. *Schatz v. City of Jacksonville*, 20 Or LUBA 565 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record consists of those materials actually placed before, and not specifically rejected by, the local decision maker during the local proceedings; and is not limited to materials submitted to the local decision maker prior to the close of the public hearing or the making of a tentative decision. *Barr v. City of Portland*, 20 Or LUBA 531 (1991).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Petitioner’s delivery of evidence to the county counsel’s office is adequate to place those materials before the county decision maker and make them part of the local record subject to LUBA review, where (1) the procedures for submitting evidence at times other than during county hearings are not specified in the county code or regulations and were not identified during the course of the proceedings below, (2) the county

failed to respond to petitioners' previous request for information regarding the proper procedure for submitting evidence, and (3) petitioner had previously submitted evidence to the county counsel's office, and that material was included in the local record. *Wade v. Lane County*, 20 Or LUBA 499 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. References to and reliance on a document by the applicant and city staff in their testimony before the city do not make that document part of the local record if it was not actually placed before the city decision maker. *Hoffman v. City of Lake Oswego*, 19 Or LUBA 607 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A statement in the findings in support of the appealed city decision that a particular document is "incorporated into the record" does not make that document part of the local record if it was not actually placed before the city decision maker. *Hoffman v. City of Lake Oswego*, 19 Or LUBA 607 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA considers the words spoken at the local government hearings to be part of the record, and will permit parties to attach excerpts from transcripts of such hearings to their briefs, notwithstanding that neither tapes nor transcripts of the local government hearings were submitted to LUBA as part of the record. Other parties may contest the accuracy of such transcript excerpts in their opening brief or in a reply brief. *Columbia Steel Castings v. City of Portland*, 19 Or LUBA 338 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a party objects to the local government's failure to include a document in the record filed with LUBA and argues the document was actually placed before the decision maker during the local proceedings, and respondent does not dispute the party's allegations, LUBA will sustain the record objection and require that the record be supplemented to include the document. *Benjamin v. City of Ashland*, 19 Or LUBA 600 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where the record contains equivocal and confusing statements by a local decision maker concerning whether particular evidence was accepted, the local decision maker will not be deemed to have rejected such evidence. *Beck v. City of Tillamook*, 19 Or LUBA 598 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record consists of those materials actually placed before the local decision maker during its proceeding and not specifically rejected by it. *Wissusik v. Yamhill County*, 19 Or LUBA 571 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record is not limited to materials submitted to the local decision maker prior to the close of public hearing. *Wissusik v. Yamhill County*, 19 Or LUBA 571 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a letter is submitted to the local decision maker, but a note is placed on the letter by a representative of the decision maker indicating that the decision maker will not consider it, such letter is rejected by the local decision

maker and, therefore, is not part of the local record. *Wissusik v. Yamhill County*, 19 Or LUBA 571 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government decision concerning a permit is remanded by LUBA and, following local proceedings on remand, a second decision concerning the permit is appealed to LUBA, the record supporting the prior decision is not included in the record of the second decision where the county fails to either include the prior record in the second record submitted to LUBA or designate the prior record as being part of the record. *Clark v. Jackson County*, 19 Or LUBA 220 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents specifically rejected by the local government during its proceedings are not part of the local government record. *Von Lubken v. Hood River County*, 19 Or LUBA 548 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Documents actually placed before the local government decision maker prior to adoption of its final written decision, and not specifically rejected by the decision maker, are properly included in the record, even where the documents are submitted after the close of the evidentiary hearing. *Von Lubken v. Hood River County*, 19 Or LUBA 548 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The minutes of public meetings conducted after the close of the evidentiary hearing in a land use proceeding, at which the local government decision maker deliberated or adopted its written decision, are properly included in the record of the local proceedings. *Von Lubken v. Hood River County*, 19 Or LUBA 548 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. A general statement by the local government decision maker during local proceedings that evidence concerning public need would not be accepted is insufficient to reject documents which address public need and were subsequently submitted during the local proceedings. A local government must identify, with reasonable particularity, the documents it is refusing to include in the record. *Von Lubken v. Hood River County*, 19 Or LUBA 548 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a second moratorium ordinance is adopted following a continuation of the local proceedings that led to the initial moratorium ordinance, the record of the local proceedings of the initial moratorium ordinance is properly included in the record in the local proceedings for the second moratorium ordinance. *Davis v. City of Bandon*, 19 Or LUBA 507 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where findings addressing Statewide Planning Goal 1, adopted in support of challenged ordinances amending the county code, describe citizen involvement and issue prioritization stages of code update proceedings *as part of* the ordinance adoption proceedings, the citizen involvement and issue prioritization proceedings are part of the record of the challenged ordinances, even though they occurred before the proposed ordinances were filed. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 500 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. *Referral* to a document in local government findings does not make the document part of the local government record. Although a document which is *adopted* or *incorporated* by reference as part of local government findings is part of the local government record, *as findings*, it is not part of the evidentiary record on which the local government based its decision, unless the document was actually placed before the local decision maker. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 500 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where city staff was directed at a city council meeting to investigate moratorium requirements, city staff reported back to the city council at a second city council meeting and the city council adopted a moratorium at a third city council meeting, the minutes of the first two city council meetings and documents placed before the city council at those meetings are properly included in the record of the local proceedings leading to the ordinance adopting the moratorium. *Davis v. City of Bandon*, 19 Or LUBA 493 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The local government record consists of those items which are actually placed before the decision maker below, and which are not specifically rejected. However, to reject evidence, and thereby exclude it from the local record, the local government must make it clear that it rejects the evidence. *Bloomer v. Baker County*, 19 Or LUBA 482 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The fact that a local government may have had a basis under its ordinances to refuse to accept evidence does not determine whether such evidence was actually refused. *Bloomer v. Baker County*, 19 Or LUBA 482 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government solicits comments, previously rejected evidence is submitted in response to that solicitation and the local government does not, thereafter, specifically reject such evidence, the previously rejected evidence becomes part of the record. *Bloomer v. Baker County*, 19 Or LUBA 482 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where a local government specifically rejects evidence, but retains possession of that evidence, such evidence is not considered part of the record, overruling *Indian Creek v. City of Lake Oswego*, 14 Or LUBA 519 (1985). *Bloomer v. Baker County*, 19 Or LUBA 482 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. The record of an ancillary proceeding before another agency or governmental body, held for the purpose of making a recommendation to the county, is not part of the record of the county's decision making process if the record of that ancillary proceeding was not placed before the county decision makers. *City of Portland v. Multnomah County*, 18 Or LUBA 911 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where petitioners do not object to the adequacy or completeness of the minutes of local proceedings included in the record and do not attach transcripts to their petition for review, petitioners may not submit partial transcripts of local proceedings for the first time at oral argument. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. LUBA takes official notice of comprehensive plans, land use regulations and other local enactments establishing land use decision approval standards, even where such documents are not included in the record. *Sunburst II Homeowners v. City of West Linn*, 18 Or LUBA 695 (1990).

27.3.2 LUBA Procedures/Rules – Record – Content/Form. Where documents are prepared or revised after the decision appealed to LUBA was adopted, the documents are not part of the local government record. *Sunburst II Homeowners v. City of West Linn*, 18 Or LUBA 695 (1990).