

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Where a cross-petitioner seeks a remedy not available to it by statute, it is an obstacle to LUBA’s review of the cross-assignment of error. LUBA lacks authority to affirm in part, and reverse in part a local government’s approval of cross-petitioner’s project application. ORS 197.835(1). Even assuming that the city erred by applying Willamette Greenway standards to cross-petitioner’s housing project application, because they are not “clear and objective,” the city’s decision approving the development could not be reversed because it is not “prohibited as a matter of law.” If LUBA agreed with cross-petitioners, the correct disposition would be remand, except that remand was not requested and would have no effect on the city’s decision approving the application. In such a situation, LUBA will consider the request a contingent cross-assignment of error. *Hulme v. City of Eugene*, 79 Or LUBA 218 (2019).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Where LUBA sustains petitioner’s assignment of error and remands a local government’s decision denying petitioner’s application, LUBA will address an intervenor’s contingent cross assignments of error in a cross petition for review, where those cross-assignments of error raise issues that might provide additional bases for remanding the decision, in order to correct other alleged errors on remand. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** A “cross assignment of error” that argues that a hearings officer made a correct decision is not an assignment of error and provides no basis for reversal or remand of a decision. *Lennar Northwest, Inc. v. Clackamas County*, 73 Or LUBA 240 (2016).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Prior to 2010 amendments to its administrative rules, where an argument in an intervenor-respondent’s brief was in substance a cross assignment of error, LUBA treated it as such. *Parkview Terrace Development LLC v. City of Grants Pass*, 71 Or LUBA 381 (2015).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** In 2010 LUBA amended its administrative rules to require that cross assignments of error be included in a cross petition for review and to provide that cross assignments of error may not be included in a response brief, as was the practice before the 2010 rule amendments. *Parkview Terrace Development LLC v. City of Grants Pass*, 71 Or LUBA 381 (2015).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Where an intervenor-respondent generally agrees with the decision on appeal but wishes to challenge an aspect of the decision if the decision is reversed or remanded on the petition for review, OAR 661-010-0030(7) requires that the intervenor-respondent file a cross-petition for review with a contingent assignment of error, within the same deadline that applies to petitions for review. *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Before LUBA adopted the current version of OAR 661-010-0030(7), intervenors-respondents could include contingent cross-assignments of error in their response briefs to challenge aspects of the decision on review, in the event the decision had to be remanded or reversed under the petition for review. Now, under

the current version of OAR 661-010-0030(7), such contingent cross assignments of error must be included in a timely filed cross-petition for review. *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** A contingent cross-assignment of error in a cross petition for review is one that seeks remand or reversal of the decision only if the decision is remanded in LUBA’s initial disposition of the appeal of the decision. Where LUBA denies all of the assignments of error in the appeal and affirms the decision, LUBA need not address a contingent cross-assignment of error that seeks reversal or remand of the decision only if the decision is remanded. *Devin Oil Co. Inc. v. Morrow County*, 70 Or LUBA 420 (2014).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** If an intervenor-respondent wishes to request that LUBA remand a county decision so that the county can apply a different statute than the one the county applied in the appealed decision, that request is not properly presented to LUBA where the intervenor-respondent neither filed a cross petition for review nor raised the issue in a cross assignment of error in the intervenor-respondent’s response brief. *WKN Chopin LLC v. Umatilla County*, 66 Or LUBA 1 (2012).

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

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Under amendments to OAR 661-010-0030(7) and 661-010-0035, which took effect on July 1, 2010, a contingent cross assignment of error must be included in a cross-petition for review rather than in a respondent’s brief. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** A cross-assignment of error must assign error to some ruling or omission in the challenged decision and seek reversal or remand based on that alleged error. A cross-assignment of error is not a vehicle to request (1) that LUBA address in the first instance an alternative legal theory under which the application could have been approved, but was not, and (2) that LUBA affirm the challenged decision based on that legal theory. *NAAVE v. Washington County*, 59 Or LUBA 153 (2009).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Where a respondent’s brief includes what are in substance cross-assignments of error, even though they are not denominated as such, LUBA will consider those de facto cross-assignments of error, provided they are reasonably recognizable as cross-assignments of error. *Pete’s Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** An argument in an intervenor-respondent’s brief that the challenged decision must be reversed based on alleged error

is, in essence, an assignment of error or cross-assignment of error. However, LUBA will decline to address such arguments where intervenor-respondent fails to demonstrate that the issues raised under such arguments were raised during the proceedings below. *Krishchenko v. City of Canby*, 52 Or LUBA 290 (2006).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Read in context, the ORS 197.830(2) requirement that a person must file a notice of intent to appeal in order to “petition [LUBA] for review” does not implicitly prohibit parties who have not filed a notice of intent to appeal from filing a cross-petition for review, as provided by OAR 661-010-0030(7). *Horning v. Washington County*, 51 Or LUBA 303 (2006).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** An intervenor-respondent may raise cross assignments of error in the response brief, but LUBA will only address those cross assignments of error if one or more of the petitioner’s assignments of error are sustained and the decision is otherwise subject to reversal or remand. *Dauenhauer v. Jackson County*, 51 Or LUBA 539 (2006).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** When an intervenor-respondent raises cross-assignments of error in a response brief rather than assignments of error in a cross petition, LUBA will only address the cross-assignments of error if the challenged decision is reversed or remanded on any of the petitioner’s assignments of error. *Young v. Jackson County*, 49 Or LUBA 327 (2005).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Because nothing in LUBA’s rules prohibits including a cross-assignment of error in the response brief, LUBA rules governing response briefs contemplate inclusion of “other matters” in the response brief, and many cross-assignments of error cannot practicably be advanced except in the response brief, it is consistent with LUBA rules to include a cross-assignment of error in a response brief. *Copeland Sand & Gravel, Inc. v. Jackson County*, 46 Or LUBA 653 (2004).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** LUBA will not reach the merits of a cross-petition where cross-petitioners have joined in a motion to dismiss an appeal and the appeal must be dismissed because the petition for review was not timely filed. *Ballou v. Douglas County*, 40 Or LUBA 377 (2001).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** New objections to the applicability of an identified approval criterion should be raised in a cross-petition for review, and are not properly presented in a response brief. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Arguments that the county should have based its decision on the subject application on statutory provisions, rather than on compliance with local standards, must be presented in a petition for review or cross-petition for review. Such arguments are not properly presented in a respondent’s brief. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** A respondent or intervenor-respondent who wishes to challenge some aspect of an appealed decision must file either a cross-petition for review or a separate appeal. LUBA will not consider assignments of error included in a respondent’s brief. *Spathas v. City of Portland*, 28 Or LUBA 351 (1994).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** A respondent or intervenor-respondent wishing to challenge some aspect of a land use decision in a LUBA appeal must either file a timely cross-petition for review or file a separate appeal. Cross assignments of error may not be included in a respondent’s brief. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Where a county failed to interpret ORS 215.213(2)(d)(C) as allowing an aggregate processing facility that conducts part of the processing on-site but completes the process of making aggregate into asphalt or Portland cement off-site, and the party wishing to assign the county’s interpretive failure as error did not appeal the county’s decision to LUBA or file a cross-petition for review, LUBA will not consider the interpretive question. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

**27.4.2 LUBA Procedures/Rules – Petition for Review – Cross-Petition.** Where an applicant neither files its own appeal of the local governing body’s decision granting the requested development approval nor files a cross-petition for review in the LUBA appeal filed by the opponents, the question of whether a local appeal by the opponents should have been dismissed by the governing body is not properly presented to LUBA. *Miller v. Washington County*, 25 Or LUBA 169 (1993).