

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where a petitioner cites over one hundred pages of the record in its preservation of error statement, but the respondents do not argue that the issues were not raised during the local proceeding and the petitioner provides more focused record citations in their reply brief, and where it is evident from the challenged decision itself that the issues were raised during the local proceeding, such failure to adequately specify in the petition for review where the issues were preserved is a technical violation that does not prejudice the respondents’ substantial rights. *Nehmzow v. Deschutes County*, 81 Or LUBA 571 (2020).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. The total number of words of briefing by either petitioners or respondents is not relevant to whether an overlength reply brief is warranted. *Campbell v. Columbia County*, 81 Or LUBA 1030 (2020).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. OAR 661-010-0039 was amended in 2010 to require a request to file a reply brief be filed “within seven days of the date the respondent’s brief is filed.” That amendment created a filing deadline. Accordingly, LUBA will deny a motion to file a reply brief under OAR 661-010-0039 (effective in 2018), where petitioner did not move for an extension of time or obtain the written consent of the parties to file a late reply brief, petitioner filed the request to file its reply brief 48 days after the response briefs were filed and petitioner offered no explanation or justification for such an egregious delay, because the violation is not a mere “technical violation” under OAR 661-010-005. *Yamhill Creek Solar, LLC v. Yamhill County*, 78 Or LUBA 1031 (2018).

27.5.5 Procedures/Rules – Briefs – Reply. While LUBA’s rules do not provide for a reply to a response to motions, LUBA’s rules also do not prohibit such a reply, and LUBA’s practice is to consider such replies to the extent they address new issues raised in the response. *McLaughlin v. Douglas County*, 76 Or LUBA 77 (2017).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. While OAR 660-010-0039 suggests that a request to file a reply brief should be made in a motion that is separate from the reply brief itself, LUBA’s rule does not expressly require that the request be made in a separate motion, and where the first paragraph of a petitioner’s reply brief is in substance a request to file the reply brief, LUBA will consider that request as the motion. *DLCD v. City of Klamath Falls*, 76 Or LUBA 130 (2017).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where mootness is at issue, the jurisdictional arguments tend to evolve over the course of the pleadings or can be updated by more recent events. Where intervenor’s reply memorandum adds a new argument to its motion to dismiss on the basis of mootness—that the appeals are moot based on a letter the intervenor recently sent to a state agency—and petitioners have responded to that new argument in a motion to strike, LUBA will consider both the reply memorandum and petitioners’ countervailing arguments in resolving the pending motion to dismiss. *Bishop v. Deschutes County*, 76 Or LUBA 515 (2017).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where intervenor applied for, and received, two consecutive land use compatibility statements (LUCS), and argues it has now abandoned any reliance on the first LUCS decision, and instead has chosen to proceed with development pursuant to the second LUCS decision, the intervenor’s current intent does not necessarily render the first LUCS decision ineffective. Unless and until the local government takes action to withdraw,

revoke, or supersede the first LUCS decision, it remains as a potential basis for intervenor to proceed with development based on the LUCS as a final and binding county decision, and is therefore not moot. *Bishop v. Deschutes County*, 76 Or LUBA 515 (2017).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA routinely allows reply briefs to respond to waiver arguments and a reply brief is the preferable way to respond to waiver arguments so that the issue that is the subject of the waiver argument and the precise places in the record where petitioner believes the issue was raised can be clearly identified. *Long v. City of Tigard*, 75 Or LUBA 390 (2017).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will consider a reply to a response to record objections, where the reply is limited to legal arguments raised in the response to the objections, and does not state additional record objections. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 638 (2016).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Failure to comply with OAR 661-010-0030(4), which requires that the petition for review demonstrate that the issues raised in the assignments of error were preserved during the proceedings below, is not a basis to reject the assignment of error or refuse to consider a reply brief that responds to a waiver challenge, absent a showing that noncompliance with OAR 661-010-0030(4) prejudices other parties' substantial rights or substantially impedes LUBA's review. *Wal-Mart Stores, Inc. v. City of Hood River*, 72 Or LUBA 1 (2015).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where a city asserts for the first time in its response brief that a previously unchallenged finding is an additional basis for denial, such an assertion constitutes a new matter, sufficient to permit a reply brief under OAR 661-010-0039. *Sage Equities, LLC v. City of Portland*, 72 Or LUBA 163 (2015).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where a city asserts for the first time in its response brief that petitioners should have proposed conditions to avoid denial of their application, such an assertion constitutes a new matter, sufficient to permit a reply brief under OAR 661-010-0039. *Sage Equities, LLC v. City of Portland*, 72 Or LUBA 163 (2015).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will deny a motion to strike a reply brief that both objects to the reply brief and responds to the merits of the assertions in the reply brief, without distinguishing between the two. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

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

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Filing a reply brief on the date of oral argument, six days after the deadline for filing the reply brief, violates OAR 661-010-0039. That violation is not a technical violation of LUBA’s rules, because it denies opposing parties a reasonable opportunity to prepare and submit their cases. *SCAN v. City of Salem*, 70 Or LUBA 468 (2014).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will not allow a reply brief that does not respond to a “new matter” raised in the response brief, but merely seeks to provide surrebuttal to arguments raised in the response brief. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 351 (2013).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief cannot be used to advance a new challenge to a finding or portion of the decision that was unchallenged in the petition for review. Where the response brief argues that an assignment of error should be rejected due to failure to challenge some portion of the decision, such as an alternative finding, the reply brief is limited to arguing that it was unnecessary to assign error to the unchallenged finding or that failure to challenge that finding in the petition for review should not affect LUBA’s review of the assignment of error at issue. *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where a disputed reply brief, a motion to strike and a motion to take evidence all revolve around an issue that is beyond LUBA’s scope of review and has no bearing on a basis for reversal or remand of the challenged decision, LUBA will summarily deny the reply brief and motions. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will accept a reply brief that responds to a local government’s argument that the petition for review failed to assign error to the local government’s failure to provide DLCD with post-adoption notice of the decision as required by ORS 197.610(1). However, to the extent the reply brief includes arguments that purport to advance a new assignment of error or new basis for reversal or remand, LUBA will not consider such arguments. *Conte v. City of Eugene*, 65 Or LUBA 326 (2012).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. The OAR 661-010-0039 seven-day deadline for a petitioner to a reply brief is not measured from the deadline for filing respondent’s response brief; it is measured from the date the response brief is actually filed. *Gravatt v. City of Portland*, 62 Or LUBA 382 (2011).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A dispute raised in the response brief over the nature of an assignment of error and LUBA’s scope of review over that assignment of error is an appropriate subject for a reply brief. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. When a local government argues in its response brief that a petitioner is precluded from advancing particular assignments of error because the local government ruled below that the issues presented in those assignments of error were not preserved for the local appeal, a petitioner may file a reply brief responding to the potentially “new matter” that the assignments of error are waived, but a petitioner may not use the reply brief as a

vehicle to allege that the local government erred in limiting the issues it considered during the local appeal. *Citizens for Responsible Development v. City of The Dalles*, 60 Or LUBA 12 (2009).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. While a reply brief is appropriate to respond to an argument that an assignment of error should be denied because petitioner failed to challenge an alternative finding, the reply must be limited to arguments as to why it was unnecessary to assign error to the alternative findings. The reply brief may not be used to challenge the alternative findings on the merits. *McGovern v. Crook County*, 60 Or LUBA 177 (2009).

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

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Filing a reply brief approximately three weeks after the response briefs were filed and approximately 10 days before oral argument is not a violation of OAR 661-010-0039. *Citizens for Responsible Development v. City of The Dalles*, 59 Or LUBA 369 (2009).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. As long as a reply brief does not merely reiterate or embellish arguments already made in the petition for review’s jurisdictional section, a reply brief is warranted to respond to a jurisdictional challenge in the response brief. In addition, a reply is appropriate to respond to an argument that a LUBA decision that petitioner relies upon should be overruled. *Bohnenkamp v. Clackamas County*, 56 Or LUBA 17 (2008).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief is warranted to address waiver arguments in a response brief even if the challenged decision includes findings on waiver and the petition for review includes an extensive discussion of the waiver issue, where the response brief provides additional justifications for the county’s waiver findings. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief is warranted where the response brief argues that the county made a potentially dispositive alternative finding that petitioner failed to challenge. While the reply brief cannot assert a new assignment of error or a new challenge to the decision, the reply brief may respond to the issue of whether the identified finding is a dispositive alternative finding and whether petitioner’s failure to challenge that finding is fatal on that issue. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will not consider assignments of error that are raised for the first time in a reply brief. *Porter v. Marion County*, 56 Or LUBA 635 (2008).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where respondents argue that issues that are raised in the petition for review were not raised below and for that reason are waived, petitioner should respond to such waiver arguments in a reply brief or in their opening argument at oral argument. *Pete’s Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief submitted at oral argument approximately 14 days after the response briefs are filed is not timely filed as required by OAR 661-010-0039 and will not be allowed. *Knapp v. City of Corvallis*, 55 Or LUBA 376 (2007).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief is warranted to reply to an argument in the response brief that some of the petitioner’s assignments of error are barred by issue or claim preclusion. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569 (2008).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. An argument in a response brief that LUBA should deny assignments of error alleging that findings addressing an approval criterion are inadequate, due to the petitioners’ failure to challenge other, allegedly related findings, is a new matter that warrants a reply brief. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where the petition for review assigns error to a county’s failure to impose conditions of approval based on certain recommendations in a forest plan, an argument in the response brief that the challenged decision implicitly requires compliance with all recommendations in a forest plan is a “new matter” that warrants a reply brief. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. An argument in the response brief that disputes petitioners’ interpretation of how two code provisions should be applied is not a “new matter” that warrants a reply brief. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Argument presented in a petitioner’s post-oral argument letter is not timely submitted where that argument could have been included in the petitioner’s reply brief. *Rhinhart v. Umatilla County*, 53 Or LUBA 402 (2007).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. An argument that petitioner failed to raise an issue during the local proceedings does not provide a basis to deny petitioner’s reply brief, although it may provide a basis to deny the related assignment of error. *Anderson v. Coos County*, 51 Or LUBA 454 (2006).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief that is filed one day after oral argument and nine days after the response brief is filed is not filed “as soon as possible” after the response brief is filed, pursuant to OAR 661-010-0039. *Jacobsen v. City of Winston*, 51 Or LUBA 602 (2006).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will not consider an argument that is presented for the first time in petitioner’s reply brief, where that argument is not presented in response to a new issue raised in the respondent’s brief. *Frewing v. City of Tigard*, 50 Or LUBA 226 (2005).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where a local code imposes a reduced mitigation obligation as the percentage of all trees on the property with a diameter over 12 inches to be saved increases, a local government does not err in allowing an inventory of trees to be

retained and removed to utilize whole numbers when measuring the diameter of trees to be removed and trees to be saved. *Frewing v. City of Tigard*, 50 Or LUBA 226 (2005).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will reject, as untimely and prejudicial to the parties’ substantial rights, a 15-page reply brief with 39 pages of appendices filed 14 days after the response brief and one day before oral argument. *Kane v. City of Beaverton*, 49 Or LUBA (512).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will not strike a petitioner’s reply to a respondent’s response to record objections where the reply addresses new issues raised in the response. *Papadopoulos v. Benton County*, 48 Or LUBA 634 (2004).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A petitioner may not assert a new basis for reversal or remand in the reply brief, or change the legal theory under which the petitioner seeks reversal or remand. *Cove at Brookings Homeowners Assoc. v. City of Brookings*, 47 Or LUBA 1 (2004).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. ORS 197.835(4) does not excuse petitioner’s failure to raise issues of compliance with a code approval standard based on the city’s failure to list that standard in the notice of hearing, where the staff report and planning commission decision both cite and quote the standard as an applicable approval criterion, and petitioner offers no reason why issues of compliance with that standard could not have been raised before the city. *Cove at Brookings Homeowners Assoc. v. City of Brookings*, 47 Or LUBA 1 (2004).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where a five-page reply brief is filed eleven days after intervenors’ brief and intervenors receive a copy approximately 48 hours before oral argument, intervenors’ substantial rights are not prejudiced. *Friends of Yamhill County v. Yamhill County*, 47 Or LUBA 508 (2004).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. When a petition for review alleges a local government committed multiple procedural errors that prejudiced substantial rights and the response brief faults the petition for review for failing to demonstrate that each procedural error prejudiced substantial rights, a reply brief is warranted to respond to that assertion. *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304 (2004).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief filed 12 days after the response brief was filed, and four days after oral argument, is not filed “as soon as possible” after the filing of the respondent’s brief, as required by OAR 661-010-0039. *Cotter v. City of Portland*, 46 Or LUBA 612 (2004).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where a petition for review provides a bare or nominal statement of jurisdiction, a reply brief is generally warranted to respond to a jurisdictional challenge in the response brief, and LUBA’s resolution of the jurisdictional challenge is not limited to the specific bases for jurisdiction specified in the petition for review. *Sievers v. Hood River County*, 46 Or LUBA 635 (2004).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA’s unwillingness to conduct an unaided search of a 40-page reply brief to identify specifically the parts of the reply brief that inappropriately go beyond responding “to new matters raised in the respondent’s brief” does not mean that additional legal theories for remand that are presented for the first time in the reply brief ripen into assignments of error or legal theories that are properly presented in a LUBA appeal. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where the petition for review assumes that the challenged decision is quasi-judicial in character and the response brief challenges that assumption, and the correct characterization of the challenged decision may affect LUBA’s analysis of petitioner’s challenge to the adequacy of the county’s findings, a reply brief is warranted to respond to the challenge in the response brief. *Manning v. Marion County*, 42 Or LUBA 56 (2002).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief filed immediately prior to oral argument and almost a month after the response brief is filed is not filed “as soon as possible,” within the meaning of OAR 661-010-0039, and will not be accepted if the failure to comply with the rule violates the opposing parties’ substantial rights. *Troy v. City of Grants Pass*, 41 Or LUBA 112 (2001).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief that is filed immediately prior to oral argument will be rejected when, as a result of the timing of the filing, opposing parties have no time to review the reply brief and prepare a response to it. *Troy v. City of Grants Pass*, 41 Or LUBA 112 (2001).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief is warranted where an assignment of error argues that a code provision was misinterpreted, thus invoking LUBA’s review under ORS 197.835(9)(a)(D), and a response brief assumes the merits of that assignment but argues that it should nonetheless fail because petitioner has not made additional allegations of prejudice to petitioner’s substantial rights that are relevant only if LUBA reviews the assignment as an alleged procedural error under ORS 197.835(9)(a)(B). *Paulson v. Washington County*, 40 Or LUBA 345 (2001).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. OAR 661-010-0039 allows a reply brief if it is filed “as soon as possible” after the response briefs are filed. A reply brief filed and served three working days after the response briefs were filed is timely filed under the rule. *Central Klamath County CAT v. Klamath County*, 40 Or LUBA 111 (2001).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where petitioner alleges in the petition for review that the decision maker failed to adopt *any* findings addressing the comprehensive plan and the respondent’s brief identifies the allegedly missing findings, LUBA will not allow petitioner to file a reply brief expanding the assignment of error to challenge the *adequacy* of those findings. *Hubenthal v. City of Woodburn*, 38 Or LUBA 935 (2000).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Responses warranting a reply brief pursuant to OAR 661-010-0039 tend to be arguments that assignments of error should fail regardless of the

merits, based on facts or authority extrinsic to those merits. Arguments in a response brief that a proposed facility is “grandfathered in” and that petitioner is collaterally estopped from raising certain issues by virtue of a prior decision allowing that facility are new matters warranting a reply brief. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

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

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where the response brief points out that the petition for review challenges only one of the county’s alternative bases for modifying an approval standard, the response brief has not raised a “new matter” within the meaning of OAR 661-010-0039. A reply brief is not a means to assign error to findings that were not challenged in the petition for review, and arguments in the response brief based on such findings are not new matters warranting a reply brief. *Hard Rock Enterprises v. Washington County*, 36 Or LUBA 106 (1999).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. If a reply brief includes positions that go beyond those that are properly included in a reply brief under OAR 661-010-0039, those positions are subject to a motion to strike. Where there is time to raise such objections in a motion to strike before oral argument, it is not appropriate to delay raising such objections until oral argument. *The Friends of Clean Living v. Polk County*, 35 Or LUBA 830 (1999).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A response brief raises “new matters” within the meaning of OAR 661-010-0039 when it argues that assignments of error in the petition for review should fail, regardless of the merits of those assignments, based on facts or authority not involved in those assignments. Where the response brief responds to the merits of an assignment of error, that response is not a “new matter” for purposes of OAR 661-010-0039. *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. An argument in the response brief that the Transportation Planning Rule does not require amendments to the city’s transportation plan until that plan has been formally adopted is a “new matter” warranting a reply brief pursuant to OAR 661-060-0039. *Citizens for Florence v. City of Florence*, 35 Or LUBA 255 (1998).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where a respondent moves for permission to file a supplemental brief but suggests no basis under LUBA’s rules for allowing what appears to be additional argument, the motion will be denied. *Dept. of Transportation v. Douglas County*, 34 Or LUBA 608 (1998).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief is not allowed pursuant to OAR 661-010-0039 where the brief merely embellishes 20 pages of argument regarding jurisdiction and

standing in the petition for review, rather than responding to issues raised for the first time in the respondent's brief. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Petitioner's request to submit a reply brief will not be allowed under OAR 661-10-039, where petitioner does not address new issues raised by respondent's brief, and the reply brief simply embellishes arguments already advanced in the petition for review. *Lindstedt v. City of Cannon Beach*, 33 Or LUBA 516 (1997).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. OAR 660-10-039 allows petitioner to file a reply brief when a new matter is raised in the response brief, notwithstanding intervenor-responder's belief that petitioner should have anticipated that the matter would be raised in the response brief. *Koo v. Polk County*, 33 Or LUBA 487 (1997).

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

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Petitioner's motion to file a reply brief will be denied under OAR 661-10-039 where the county does not raise a new issue for petitioner to address in the reply brief. *Still v. Marion County*, 32 Or LUBA 40 (1996).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. If the respondent's brief challenges the petitioner's standing and LUBA's jurisdiction, LUBA will allow a reply brief. *Boom v. Columbia County*, 31 Or LUBA 318 (1996).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Failure to file a request to file a reply brief "as soon as possible" after the respondents' brief is filed is a technical violation of LUBA's rules which, under OAR 661-10-005, does not affect LUBA's review unless the substantial rights of the parties are prejudiced. *Shaffer v. City of Salem*, 29 Or LUBA 592 (1995).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. When a contention that LUBA lacks jurisdiction is made for the first time in the respondent's brief, a reply brief concerning the subject of LUBA's jurisdiction is warranted. *Shaffer v. City of Salem*, 29 Or LUBA 592 (1995).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Petitioners may not make a new challenge to the appealed decision in a reply brief, and thereby effectively add an assignment of error to the petition for review. *Shaffer v. City of Salem*, 29 Or LUBA 592 (1995).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where the petition for review includes allegations concerning the content of a tape in the record, and respondents object that petitioner failed to attach a transcript of the relevant portions of the tape to the petition for review, LUBA will allow petitioner to submit a transcript in a reply brief, so long as respondents have adequate time to review the tape and transcript prior to oral argument. *Shaffer v. City of Salem*, 29 Or LUBA 592 (1995).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Arguments contained in respondents’ briefs, that petitioner failed to exhaust local appeals and is precluded from raising particular issues before this Board, are new matters not contained in the petition for review which warrant the filing of a reply brief. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where the respondent’s brief contains arguments that petitioner waived certain issues raised in the petition for review, petitioner will be allowed to file a reply brief to respond to those waiver arguments. *Caine v. Tillamook County*, 24 Or LUBA 627 (1993).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Arguments in respondent’s brief that petitioner waived issues raised in the petition for review by failing to raise those issues during the local proceedings constitute new matters that petitioners could not have anticipated in the petition for review, thus warranting the allowance of a reply brief. *Glisan Street Associates v. City of Portland*, 24 Or LUBA 621 (1993).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Under OAR 661-10-039, it is appropriate to grant a motion to file a reply brief to allow petitioner to respond to issues raised in respondents’ briefs concerning standing, jurisdiction, and attachment of documents not in the record. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. LUBA will not reject as untimely a motion to file a reply brief that is filed 17 days after the response briefs were filed, because having to review and prepare to respond to a seven page reply brief received four days before oral argument does not prejudice respondents’ substantial rights. OAR 661-10-005. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Where the respondent’s brief includes arguments that code sections relied upon in the petition for review are inapplicable, a motion to file a reply brief will be allowed. *Murray v. Clackamas County*, 22 Or LUBA 247 (1991).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. After the petition for review is filed, respondents may, in their response brief or in a motion to dismiss, identify disputed allegations of fact, and explain why under their version of the facts petitioners lack standing. Petitioners may then request permission to file a reply brief to respond to respondent’s legal arguments, move for an evidentiary hearing to present facts establishing standing or do both. *Citizens Concerned v. City of Sherwood*, 20 Or LUBA 550 (1991).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Argument in respondent’s brief that the remedy petitioners seek is unclear, or that petitioners failed to object to statutes, and citation in respondent’s brief of cases which petitioners believe irrelevant are not new matters which warrant the filing of a reply brief, but rather are matters to which petitioners can adequately respond at oral argument. *Dolan v. City of Tigard*, 20 Or LUBA 411 (1991).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. A reply brief is unwarranted under OAR 661-10-039, if it simply embellishes arguments advanced in the petition for review. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. OAR 661-10-039 requires petitioners to demonstrate a need for a reply brief. Although it is desirable to have a full explanation of the need for a reply brief in petitioner’s motion to file a reply brief, LUBA will also consider oral argument in support of the motion in determining whether the need for a reply brief has been demonstrated. *Knapp v. City of Jacksonville*, 20 Or LUBA 189 (1990).

27.5.5 LUBA Procedures/Rules – Briefs – Reply. Excerpts of transcripts of the local government’s proceedings below, which are submitted to LUBA for the first time as attachments to respondent’s brief, are “new matters raised in the respondent’s brief” to which petitioner may respond in a reply brief. OAR 661-10-039. *Columbia Steel Castings v. City of Portland*, 19 Or LUBA 338 (1990).