

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** LUBA will deny a motion from an applicant who missed the deadline to intervene in an appeal to participate as an amicus because such participation would effectively allow that applicant to participate as an intervenor-respondent and file what is in effect a response brief to the petition for review, without meeting the statutory deadline for intervention and without payment of an intervenor fee as set out in ORS 197.830(7)(a). *VanSickle v. Klamath County*, 77 Or LUBA 588 (2018).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** LUBA will generally not consider new defenses raised solely in an amicus brief. *VanSickle v. Klamath County*, 77 Or LUBA 588 (2018).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** To preserve the legislative intent in requiring timely intervention, LUBA has generally declined to grant amicus participation to interested parties to the proceedings below who simply missed the deadline to intervene, and who argue only that LUBA’s review would be aided by their participation because they are interested parties. *Wetherell v. Douglas County*, 77 Or LUBA 597 (2018).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** In circumstances where the respondent has informed LUBA that it does not intend to file a response brief, a movant to appear as amicus must still establish that LUBA’s review would be “significantly aided” by the movant’s participation as amicus, and that briefing would not be delayed. *Wetherell v. Douglas County*, 77 Or LUBA 597 (2018).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** In a case regarding a proposed solar energy project, LUBA will allow the participation of a trade association as amicus pursuant to OAR 661-010-0052, where the trade association was founded for the purpose of promoting solar energy, and where some of its members are utility scale solar developers. *1000 Friends of Oregon v. Jackson County*, 76 Or LUBA 488 (2017).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** LUBA will deny a motion to file an amicus brief for an applicant, who failed to file a motion to intervene in an appeal, where participation by proposed amicus would delay the established briefing schedule, require rescheduling oral argument, and require a corresponding extension of the statutory deadline for issuing LUBA’s final opinion and order set out in ORS 197.830(14). *KanDu Ranch, LLC v. Jackson County*, 72 Or LUBA 454 (2015).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** To preserve the legislative intent in requiring participants to the proceedings below to timely intervene in appeals to LUBA, LUBA has generally declined to grant amicus status to interested parties who simply missed the statutory deadline to intervene in the appeal. A significant exception is where the respondent informs LUBA that it does not intend to file a response brief, and absent amicus participation no brief responding to the petition for review would be filed at all, and LUBA would have to resolve the appeal based solely on the petition for review. *Central Oregon Landwatch v. Jefferson County*, 62 Or LUBA 530 (2010).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** Where the respondent indicates it intends to file a response brief, LUBA will deny a motion to appear as amicus from an interested party

who failed to file a timely motion to intervene, absent a demonstration that the respondent's brief will not adequately respond to the petition for review or otherwise that the amicus brief would significantly aid LUBA's review. *Central Oregon Landwatch v. Jefferson County*, 62 Or LUBA 530 (2010).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** Where the sole basis asserted to appear as amicus is the intent to present additional legal arguments in support of a party's assignments of error, but those arguments are not presented by any other party to the appeal, the amicus motion will be denied because LUBA will not remand a decision based on legal arguments not presented by a party to the appeal. *Oregon Shores Conservation Coalition v. Coos County*, 55 Or LUBA 705 (2007).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** LUBA has significant discretion under OAR 661-010-0052 in determining when amicus participation will assist the Board's review. LUBA will allow the applicant to appear as amicus, where the applicant filed a response brief and appeared at oral argument, but the motion to intervene was not denied until LUBA's final opinion, due to the petitioner's late objection to the timeliness of the motion to intervene. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** The fact that a potential *amicus* could have intervened in an appeal, but did not, does not prevent participation as an *amicus*. *Nelson v. Curry County*, 48 Or LUBA 178 (2004).

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

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** An *amicus*' assertion that it can knowledgeably discuss the history, legislative intent, and policy behind the approval criteria is sufficient to significantly aid LUBA's review. *Nelson v. Curry County*, 48 Or LUBA 178 (2004).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** A property owner's "specific and narrow interest" in property is not sufficient by itself to show that LUBA's review would be significantly aided by the property owner's participation as an *amicus*. *Cotter v. Clackamas County*, 35 Or LUBA 749 (1998).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** That LUBA will have only the perspective of the petitioner for review is always the case where the local government fails to respond and no party moves to intervene, and is not a valid reason by itself to delay the appeal so that an *amicus* brief may be filed. *Krieger v. Wallowa County*, 35 Or LUBA 742 (1998).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** LUBA's rules do not provide for the filing of motions or responses to motions by an *amicus*. Accordingly, LUBA will not consider any submissions of an *amicus* other than a brief. *Lewis v. City of Portland*, 31 Or LUBA 513 (1996).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** Except as provided in 197.830(13)(b), LUBA’s review is limited to the local government record. A motion to participate as an *amicus* will be denied where the only reason stated for the request is to present expert testimony and other evidence that is not included in the local government record. *Sanchez v. Clatsop County*, 26 Or LUBA 647 (1994).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** OAR 661-10-052(1) does not bar persons or organizations representing a private interest from appearing as an *amicus* in a LUBA appeal proceeding. *Adkins v. Heceta Water District*, 23 Or LUBA 207 (1992).

**27.7.4 LUBA Procedures/Rules – Parties – Amicus.** OAR 661-10-052, authorizing *amicus* participation in LUBA proceedings, does not result in *amici* becoming *parties* to the appeal. Consequently, OAR 661-10-052 does not allow party status to a person in violation of ORS 197.830. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 781 (1991).