

Appendix D. LUBA Procedures/Rules: Headnotes 27.3.2 - Record – Content/Form

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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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 661-010-0026(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. 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. 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. 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. 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. 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. 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. 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 make 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. 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. 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. 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 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. 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. **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. **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 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. **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. 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. 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. **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. **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. 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. 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. 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. 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 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. 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. 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. **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. **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 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. 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. 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. 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. 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 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. *McPeck v. Coos County*, 25 Or LUBA 805 (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. 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. 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. 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. **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 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. 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. 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. 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 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. 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. **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 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. 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 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).