

1                   **Exhibit A . List of Requested Record Of Proceedings Corrections for**  
2   **LUBA No. 2008-224**

3   **May 4, 2009**

4  
5                   Lead-Petitioner Michael L. Walker received the record of the proceedings for LUBA No.  
6                   2008-224 April 23, 2009. The record was also dated April 23, 2009. Steve Rich, Josephine County  
7                   Legal Counsel, and Walker meet April 30, 2009 to discuss the record per OAR 661-010-0026(1).  
8                   Tentative agreement was made to supplement the record with Omitted Item 1, 58 pages of written  
9                   testimony from Mike Walker dated February 5, 2007 to the Josephine County Rural Planning  
10                  Commission for Item 16. Agreement could not be reached on the other objections.

11                  Overall the submitted record of proceedings is extensive at 2,495 pages covering numerous  
12                  public hearings over several years since November 17, 2006. There are 19 items identified for the  
13                  record. The Josephine County Planning Office and the Josephine County Legal Counsel are  
14                  commended in the comprehensive outline of the items and exhibits satisfying requirements at OAR  
15                  661-010-0025(4)(a)(B)/OAR 661-010-0026(2)(d) and OAR 661-010-0025(4)(a)(E)/OAR 661-010-  
16                  0026(2)(d).

17                  Per the Transmittal of Record of Proceeding, LUBA No. 2008-224, from Steven E. Rich,  
18                  OSB # 80099, Josephine County Legal Counsel, dated April 23, 2009, Rich served a copy of the  
19                  Record of Proceeding “CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL”, to Mike  
20                  Walker, Lead Petitioner. Until the September 30, 2009 meeting the Petitioners had assumed that  
21                  their copy was the same as that received by LUBA (OAR 661-010-0025(2) & (3); OAR  
22                  661-010-0075(2)(b)(A), (C), & (D); OAR 661-010-0075, Exhibit 6). However, at the meeting  
23                  Walker was informed by Josephine County Legal Counsel that LUBA had received the record of  
24                  proceedings securely fastened on the left side in a suitable folder (ie., three three-ring binders).

25                  **Objection 1. Authority: OAR 661-010-0025(4)(a)(A)/OAR 661-010-0026(2)(d)**

26                  An objection to the total record of proceedings is that it did not conform to the requirements  
27                  of OAR 661-010-0025(4)(a)(A) - be filed in a suitable folder even though it was “CERTIFIED TO  
28                  BE A TRUE COPY OF THE ORIGINAL”. The record was provided loose leaf in a cardboard box.  
This would not normally be an issue if the record was several hundred pages versus several thousand  
pages. The large size of the record is just not manageable as provided. To be useable for review  
petitioners would have to punch holes in the 2,495 page record for insertion into three large three-

1 ring binders to arrive at a similar product seen at the Josephine County Planning Office and the  
2 Josephine County Legal Counsel's office, and evidently as received by LUBA.

3 The record needs to be filed in a suitable folder.

4  
5 **Objection 2. Authority: OAR 661-010-0025(4)(a)(C)/OAR 661-010-0026(2)(d)**

6 An objection to the total record of proceedings is that it did not conform to the requirements  
7 of OAR 661-010-0025(4)(a)(C) - be securely fastened on the left side even though it was  
8 "CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL". The record was provided loose leaf  
9 in a cardboard box. This would not normally be an issue if the record was several hundred pages  
10 versus several thousand pages. The large size of the record is just not manageable as provided. To  
11 be useable for review petitioners would have to punch holes in the 2,495 page record for insertion  
12 into three large three-ring binders to arrive at a similar product seen at the Josephine County  
13 Planning Office and the Josephine County Legal Counsel's office, and evidently as received by  
14 LUBA.

15 The record needs to be securely fastened on the left side.

16 **Objection 3. Authority: OAR 661-010-0026(2)(a)**

17 A major problem is the record does not include all materials included as part of the record  
18 during the proceedings before the final decision maker.

19 OAR 661-010-0026(2)“(a) The record does not include all materials included as part of the  
20 record during the proceedings before the final decision maker. The omitted item(s) shall be  
21 specified, as well as the basis for the claim that the item(s) are part of the record.”

22 Omitted Item 1

23 Missing 58 pages of written testimony from Mike Walker, Lead Petitioner (February 5, 2007)  
24 to the Josephine County Rural Planning Commission (RPC) for Item 16.

25  
26 Josephine County's history is mixed as it pertains to a citizen's written testimony being  
27 "placed before" a hearing body in a land use proceeding. It changes with the planner in charge as  
28 there are no specific identified county procedures, except procedures for the quasi-judicial process,  
public notice, and public hearings. Even for these three areas there are many situations not covered

1 in the procedures and the hearing bodies' deferral to the Planning Director's opinion is near absolute  
2 (see "*For The Record, Or Not*", <http://www.jeffnet.org/~hugo/FTR3.htm>).

3 In this case the official record of proceedings used by the RPC was never know by the parties  
4 as no list of the record of proceedings was developed prior to each of the four public hearings before  
5 the RPC. For example, petitioner Mike Walker traveled on two occasions to the Josephine County  
6 Planning Office to review the record prior to a public hearing before the RPC. The "record" he was  
7 shown for review was the entire file for the subject property for the approximate last decade and one-  
8 half. The file was in four to five medium sized cardboard boxes without any identification of what  
9 was part of the official record of proceedings for the 2006 - 2007 RPC public hearings. The record  
10 of proceedings before the RPC was only developed after the LUBA appeal. Also, the minutes of  
11 the applicable RPC hearings, unlike hearings before the Josephine County Board of Commissioners  
12 (BCC), do not have a list of documents (exhibits) entered into the record.

11 It is unknown why the February 5, 2007 written testimony from Mike Walker is missing from  
12 the record of proceedings. However, the two points of order on the title page of Walker's omitted  
13 written testimony are captured almost in quoted detail in the minutes of the RPC's February 5, 2007  
14 public hearing. Rec 1,219

15 Petitioners provided a hard copy of Omitted Item 1 to the Josephine County Legal Counsel.

16  
17 Omitted Item 2

18 Finding III.H. Findings of Fact (Rec. 63) for LUBA No. 2008-224 follows in relevant part:

19  
20 " \* \* \* The Board takes judicial notice of the documents, studies, testimony and legislative  
21 intent for the Internal Rate of Return System to identify forest lands in Josephine County as  
22 they apply to the subject property. The Board also considered the background documents on  
23 the adoption of the IRR rating system as well as the objections submitted to the adequacy of  
24 the system. \* \* \*"

25 Missing records include the documents, studies, testimony and legislative intent records for  
26 the IRR system **that the Board took judicial notice** of to identify forest lands in Josephine County  
27 as they apply to the subject property. Taking judicial notice of known and available documents such  
28 as the United States Constitution, the Oregon Constitution, Charter for Josephine County, Oregon,  
Josephine County Comprehensive Plan, Josephine County Transportation System Plan, Josephine  
County Rural Land Development Code, etc. is not the issue. As far as we know the referred to the

1 IRR rating system is unique to Josephine County, Oregon. What is the issue is that the Board took  
2 judicial notice of an unknown list of documents studies, testimony and legislative intent records for  
3 the IRR system that it used in its decision-making process. We believe the documents that the Board  
4 took judicial notice of are missing until a list of the specific documents, studies, testimony and  
5 legislative intent records for the IRR system are provided with the actual documents available at a  
known and accessible location.

6 Missing records include the background documents on the adoption of the IRR rating system  
7 as well as the objections submitted to the adequacy of the system **that the Board considered**. This  
8 set of missing records is similar to the documents that the Board took judicial notice of except that  
9 the Board considered these documents in its decision-making process. These missing documents  
are part of the record for which the record needs to be supplemented.

10 Omitted Item 3

11 **Authority: OAR 661-010-0025(2) & (3) in relevant part:**

12  
13  
14 OAR 661-010-0025"(2) Transmittal of Record: The governing body shall, within 21 days  
15 after service of the Notice on the governing body, transmit to the Board a certified copy of  
the record of the proceeding under review. . . .”

16  
17 OAR 661-010-0025"(3) Service of Record: Contemporaneously with transmittal, the  
18 governing body shall serve a copy of the record, exclusive of large maps, tapes, and difficult-  
19 to-duplicate documents and items, on the petitioner or the lead petitioner, if one is  
designated. . . .”

20 **Authority: OAR 661-010-0075(2)(b)(A), (C), & (D) in relevant part:**

21  
22 OAR 661-010-0075(2)(b)“(A) Any document filed with the Board, other than the record as  
23 provided in OAR 661-010-0025(3), or the record after withdrawal for reconsideration as  
24 provided in OAR 661-010-0021(6), must also be served on all parties contemporaneously.  
. . . .”

25  
26 OAR 661-010-0075(2)(b)“(C) Service copies of documents other than the Notice or the  
27 record shall include a certificate showing the date of filing with the Board (see Exhibit 5).”  
28

1 OAR 661-010-0075(2)(b)“(D) Documents filed with the Board shall contain either an  
2 acknowledgement of service by the person served or proof of service by a statement certified  
3 by the person who made service of the date of personal delivery or deposit in the mail, and  
4 the names and addresses of the persons served (see Exhibit 6).”

5 **Authority: OAR 661-010-0075, Exhibit 6 in relevant part:**

6 “. . . I hereby certify that I served the foregoing [NAME OF DOCUMENT] for LUBA No.  
7 \_\_\_\_\_ on [DATE] by mailing to said parties or their attorney a true copy thereof  
8 contained in a sealed envelope with postage prepaid addressed to said parties or their attorney  
9 . . .”

10 Per the Transmittal of Record of Proceeding, LUBA No. 2008-224, from Steven E. Rich,  
11 OSB # 80099, Josephine County Legal Counsel, dated April 23, 2009, Rich served a copy of the  
12 Record of Proceeding “CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL”, to Mike  
13 Walker, Lead Petitioner.

14 Original submitted colored written testimony should be part of the original record of  
15 proceeding when necessary to understand the submitted testimony. For example, black and white  
16 copies of original colored maps and aerial photographs that are unintelligible per the meaning of the  
17 testimony are valueless and make the items/exhibits act as omitted items.

18 It is difficult for the petitioners, or any other party, to know what original testimony records  
19 were submitted that were in color except for their own submissions. For the Petitioners it means  
20 17 submissions (Rec 2,111), but it is suspected that many original submitted maps and most aerial  
21 photographs as well as maps and photographs part of a staff report were in color.

22 Our copy of the record of proceedings was certified to be a true copy of the original record  
23 of proceedings and that copy submitted to LUBA, but the following eight (8) items/exhibits out of  
24 our 17 map submissions act as omitted items as they are black and white copies and unintelligible  
25 to us and presumably to LUBA per the meaning of our submitted testimony, and especially our  
26 assignments of error in our developing petition for review, and therefore valueless in their black and  
27 white copied condition to any party receiving a black and white copy of the record:

- 28 1. Map G1 Soils: 35-06-08, Tax Lot 100, Subject Property And Adjacent Lands. Rec 2,112
2. Map G2 Soils: 35-06-08, Tax Lot 100, Subject Property And Adjacent Or Nearby Lands. Rec  
2,113

- 1 3. Map G3 USGS Quad (Topography): 35-06-08, Tax Lot 100, Subject Property And Adjacent  
2 Lands. Rec 2,114
- 3 4. Map G5a) Zoning: 35-06-08, Tax Lot 100, Subject Property And Adjacent Lands. Rec 2,116
- 4 5. Map G5b) Zoning: 35-06-08, Tax Lot 100, Subject Property And Nearby Forest Lands. Rec  
5 2,117
- 6 6. Map G6 Aerial Photograph Of Forest Land - Forest Operations Or Practices On Adjacent Or  
7 Nearby Forest Lands. Rec 2,118
- 8 7. Map G13 Deer Habitat: 35-06-08, Tax Lot 100, Subject Property And Adjacent Lands. Rec  
9 2,126
- 10 8. Map G14 Logging Roads: 35-06-08, Tax Lot 100, Subject Property. Rec 2,127

11 It is remembered that the following maps and aerial photographs by the Josephine County  
12 Planning Office used as overhead presentations at public hearings before the Josephine County  
13 Board of County Commissioners (BCC) were in color as presented. The overheads also act as  
14 omitted items to us and presumably to any party receiving a copy of the black and white record of  
15 proceedings, as they are unintelligible or deficient in much of their colored value in discriminating  
16 the values depicted per the meaning of their presentation, and therefore valueless or of a lesser value  
17 by parties receiving the record in their black and white copied condition where they are using or  
18 might use the missing records in preparing their arguments to LUBA:

- 19 1. Five (5) of twelve (12) colored overhead presentation documents from the Josephine County  
20 Planning Department for a October 6, 2008 public hearing before the BCC (Item 6, Records  
21 127 - 154):  
22  
23 Recs 135, 136, 151, 153, 154
- 24 2. Four (4) of four aerial photographs of the subject property and the adjacent BLM lands  
25 submitted by the Illinois Valley Conservation District Office (Item 12, Records 679 - 681):  
26  
27 Recs 679, 680, 681.
- 28 3. Six (6) of 15 colored overhead presentation documents from the Josephine County Planning  
Department for the February 20, 2008 public hearing before the BCC (Item 13, Records 857  
- 904):  
Recs 862, 871, 872, 886, 892, 903.