

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Published notice of a hearing to consider potential increased permit and planning fees, while vague, is not misleading, when the land use decision adopted increases land use appeal fees. Therefore, the exception to the 21- day deadline for filing a notice of intent to appeal under ORS 197.830(3), when the land use decision made is sufficiently different from the notice of the proposed action, does not apply. *Jacobsen v. City of Winston*, 54 Or LUBA 730 (2007).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. OAR 660-041-0030, which requires notice to the Department of Land Conservation and Development (DLCD) of an application for or decision on a permit pursuant to a Ballot Measure 37 waiver, is not inconsistent with ORS 197.763(2)(c), which requires a local government if requested by the applicant to notify DLCD of a hearing on a land use application. *DLCD v. Deschutes County*, 54 Or LUBA 799 (2007).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A land use compatibility statement that determines the appropriate zoning classification for a proposed use of land within an urban growth boundary may constitute a “zoning classification” decision as defined by ORS 227.160(2)(b), and thus not constitute a statutory “permit” that would require the city to provide notice and an opportunity for hearing. *Hallowell v. City of Independence*, 53 Or LUBA 165 (2006).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Absent some authority to the contrary, in approving a preliminary grading plan the local government is not required to determine what procedures will govern consideration of the final grading plan. Where the decision approving the preliminary grading plan does not determine and is not required to determine the procedures that govern the final grading plan, LUBA will reject arguments that the local government erred in failing to impose conditions requiring the county to provide notice and opportunity to request a hearing in considering the final grading plan. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.763 does not require local governments to treat staff-generated proposed findings that are submitted to the final decision maker for review and adoption at the final meeting as a “staff report” that must be made available to the public seven days prior to the meeting. Absent local provisions to the contrary, there is no right for parties to review or rebut proposed findings prior to their adoption. *Frewing v. City of Tigard*, 52 Or LUBA 518 (2006).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where neither the local government nor LUBA has jurisdiction to resolve the legality of a condition requiring necessary facilities to be constructed prior to obtaining final approval of a two-step subdivision approval process, the local government may (1) adopt findings establishing that fulfillment of the condition of approval is not precluded as a matter of law, and (2) ensure that the condition will be fulfilled prior to final

subdivision approval or actual development. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

25.3.3 Local Government Procedures - Compliance with Statutes - Notice of Hearing. ORS 197.830(3) and 197.620(2) are similarly worded and impose the same legal standard. Under those statutes there are certain legal consequences where the notice of hearing is inadequate to describe the local government's ultimate decision. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

25.3.3 Local Government Procedures - Compliance with Statutes - Notice of Hearing. ORS 197.830(3) applies where the nature or scope of the proposed use that is described in the notice that precedes the local government's public hearing is later changed and the proposed use is approved as changed in the local government's decision. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

25.3.3 Local Government Procedures - Compliance with Statutes - Notice of Hearing. Any questions that may be raised regarding how a local government chooses to go about applying the approval criteria that are listed in a notice of hearing to the proposal described in the notice implicate the merits of this appeal; those questions do not implicate the adequacy of the city's notice under ORS 197.620(2) and 197.830(3). *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where petitioners fail to establish that any statute obligates a county to provide petitioners notice of a building permit decision that modifies a condition of partition approval, the “knew or should have known” standard at ORS 197.830(3)(b) applies rather than the “actual notice” standard at ORS 197.830(3)(a), in determining whether an appeal is timely filed under that statute. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Given the Department of Land Conservation and Development Commission's (DLCDC's) critical role in the plan amendment review process, complete failure to provide notice of post-acknowledgment plan amendments to DLCDC may be a “substantive” error that obviates the requirement to show that the procedural error prejudiced the petitioner's substantial rights. However, it does not follow that failure to provide other types of notice to other parties in other contexts is also a “substantive” error obviating the ORS 197.835(9) requirement that the petitioner show prejudice. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. While ORS 215.223(3) requires a county to provide notice of the hearing on a “zone change,” a proposal to correct the official zoning map to accurately reflect previously adopted ordinances is not a “zone change” within the meaning of ORS 215.223(3), and therefore the county's failure to provide notice of such a map correction does not violate the statute. *Sullivan v. Polk County*, 51 Or LUBA 107 (2006).

25.3.3 Local Government Procedures - Compliance with Statutes - Notice of Hearing. While deviations from the post acknowledgment plan amendment notice requirements at ORS 197.610(1) may constitute procedural errors that will not provide a basis for remand absent prejudice to a petitioner's substantial rights, a complete failure to provide notice to the Department of Land Conservation and Development under ORS 197.610(1) is a substantive error and requires remand without regard to whether the failure prejudiced petitioner's substantial rights. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A petitioner's decision to rely on a city website that stated the city council meetings generally are held at 7 p.m. does not excuse the petitioner's failure to appear at a 6 p.m. hearing on a variance request where, although petitioner was not entitled to written notice of the hearing, the written notice of the variance hearing accurately stated the hearing would begin at 6 p.m. and was provided to all persons who were entitled to written notice of the hearing. *Neighbors 4 Responsible Growth v. City of Veneta*, 50 Or LUBA 745 (2005).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. To comply with ORS 197.763(3)(b), a notice of hearing must identify the applicable approval criteria by code number or similar means of identification sufficient to direct the recipient to the actual code or plan provisions that the city deems to be approval criteria. Reference to a code provision that itself merely requires "conformance with the comprehensive plan" is insufficient to provide effective notice of any comprehensive plan provisions. *Kingsley v. City of Sutherlin*, 49 Or LUBA 242 (2005).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The city's failure to list certain plan policies as approval criteria in the notice of hearing does not allow petitioner to raise new issues regarding those plan policies under ORS 197.835(4)(a), where two staff reports and a planning commission decision address the plan policies as approval criteria and petitioner is given ample constructive notice that the city believed the policies to be approval criteria. *Kingsley v. City of Sutherlin*, 49 Or LUBA 242 (2005).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. An issue regarding compliance with an approval criterion is waived if not raised below, unless the petitioner demonstrates that the local government failed to list the criterion in the notice of hearing under ORS 197.835(4). However, LUBA will not address an issue under ORS 197.835(4) where the petitioner fails to explain why the notice of hearing is defective. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where statutory notice of hearing requirements are not jurisdictional, failure to comply with those statutory requirements is reviewed under ORS 197.835(9)(a)(B), which establishes LUBA's scope of review for procedural errors. *Kneeland v. Douglas County*, 48 Or LUBA 347 (2005).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a notice for the required second hearing on formation of a special district corrects certain errors in the notice of the first hearing, any defects in the first notice are cured. *Kneeland v. Douglas County*, 48 Or LUBA 347 (2005).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A planning commission permit approval can defer findings of compliance with a conditional use standard requiring that proposed structures “complement” the design of the area, by relying on subsequent review by an architectural review committee, where the committee’s review provides the same notice and opportunity for hearing required by state law for the conditional use decision, and the committee will determine compliance with the deferred standard as part of its architectural review. *McCulloh v. City of Jacksonville*, 46 Or LUBA 267 (2004).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. For the purposes of ORS 197.830(3), a notice of hearing that explains that a county is considering the annexation of property to a sewer district adequately describes the proposed action to be taken by the county, even if the area described in the notice is later amended to delete one parcel. *Miner v. Clatsop County*, 46 Or LUBA 467 (2004).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Providing only 22 days notice of hearing to DLCD of a post-acknowledgment plan amendment, rather than the full 45 days notice required by ORS 196.610(1), is not reversible error, where both petitioner and DLCD participated in the proceedings, and there is no attempt to demonstrate that short notice prevented any other person that might rely on the notice from participating in the local government’s proceedings. *Bryant v. Umatilla County*, 45 Or LUBA 653 (2003).

25.3.3 Local Government Procedures - Compliance with Statutes - Notice of Hearing. Providing notice and a copy of proposed zoning ordinance amendments to DLCD under ORS 197.610(1) and then adopting an additional zoning ordinance amendment that was not included with the notice without providing additional notice to DLCD is not error. *OCAPA v. City of Mosier*, 44 Or LUBA 452 (2003).

25.3.3 Local Government Procedures - Compliance with Statutes - Notice of Hearing. The broad notice and potential for participation by DLCD and others under ORS 197.610 is the *quid pro quo* for ORS 197.625, which deems post-acknowledgment land use regulation amendments to be consistent with the statewide planning goals as a matter of law, if the amendment is not appealed or is affirmed on appeal. Therefore, whether errors in a city’s notice to DLCD under ORS 197.610 warrant remand depends upon whether the errors are of the kind or of a degree that calls into question whether the ORS 197.610 to 197.625 process nevertheless performed its function. If so, remand may be required, without regard to whether petitioners before LUBA can demonstrate prejudice to their substantial rights. *OCAPA v. City of Mosier*, 44 Or LUBA 452 (2003).

25.3.3 Local Government Procedures - Compliance with Statutes - Notice of Hearing.

Where a city's notice to DLCD under ORS 197.610(1) states that the initial evidentiary hearing on a proposed zoning ordinance amendment will be held on November 7 and the hearing is actually held on November 6, and LUBA cannot determine whether persons who may have been depending on notice that DLCD subsequently provided of that initial evidentiary hearing may have been prejudiced by the city's error, LUBA will remand the city's decision. *OCAPA v. City of Mosier*, 44 Or LUBA 452 (2003).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

Although a complete failure to provide advanced published notice pursuant to ORS 215.060 renders an ordinance of “no legal effect,” if published notice is provided, challenges to the adequacy of that notice are analyzed as procedural errors and provide a basis for reversal or remand if such errors prejudice a petitioner's substantial rights. *Ramsey v. Multnomah County*, 44 Or LUBA 722 (2003).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

ORS 215.503 (2003) requires a county to provide mailed written notice of the first hearing on an ordinance to property owners whose property could be rezoned due to a comprehensive plan amendment, but it does not require additional public notice every time LUBA remands an ordinance. *Ramsey v. Multnomah County*, 44 Or LUBA 722 (2003).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

Because ORS 215.060 specifically provides that a county's failure to provide notice of an action regarding its plan as required by the statute shall result in the county's action having “no legal effect,” LUBA may not overlook a county's failure to provide the notice required by ORS 215.060, notwithstanding that the lack of notice did not prejudice petitioner's substantial rights. *Ramsey v. Multnomah County*, 43 Or LUBA 25 (2002).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

Mailing individual notice of a proposed comprehensive plan amendment to affected property owners is not sufficient to meet the requirement under ORS 215.060 that a county publish notice of such action in a “newspaper of general circulation” or “in the territory * * * concerned.” *Ramsey v. Multnomah County*, 43 Or LUBA 25 (2002).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

ORS 216.060 provides that a county may give notice of a plan amendment by mail, radio, television or other means *in addition to* publishing notice in a “newspaper of general circulation,” but the statute does not allow a county to provide notice by such other means *instead of* by publication in a newspaper. *Ramsey v. Multnomah County*, 43 Or LUBA 25 (2002).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

Absent a local code requirement to the contrary, ORS 197.763 does not require that every hearing notice given by a local government must provide an overview of local appeal procedures and how those procedures may affect an appeal at LUBA, as long as the notices inform participants of their obligation to raise issues

regarding compliance with applicable criteria at the earliest opportunity. *Scheyer v. City of Hood River*, 43 Or LUBA 112 (2002).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Not every violation of the requirement at ORS 197.610(1) and its implementing rule that a local government provide notice of proposed post-acknowledgment plan amendments to the Department of Land Conservation and Development Commission (DLCDC) more than 45 days before the initial public hearing is a substantive error that must result in remand. Failure to specify all of the proposed zone changes on the form provided to DLCDC is, at most, procedural error that does not warrant remand absent a demonstration of prejudice to petitioner's substantial rights. *Stallkamp v. City of King City*, 43 Or LUBA 333 (2002).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A county commits no error in applying a zoning code requirement that a conditional use be found to be in harmony with the purpose and intent of the zone as a mandatory approval criterion where the provision expressly requires that determination. The county's identification in its notice of hearing of the chapter in which that zoning code requirement appears is sufficient to give the applicant notice of that approval criterion where the chapter is short and code requirement for a finding concerning that criterion is clear. *Hick v. Marion County*, 43 Or LUBA 483 (2003).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where petitioner argues the city erred by approving an expedited annexation while failing to “(1) publish public notice, (2) notify adjacent property owners, (3) post a notice on the properties, (4) notify property owners within created ‘service islands,’ or (5) notify the community in time for this issue to be included on public agendas to be discussed,” but petitioner identifies no legal requirement for any of these kinds of notice, petitioner fails to provide a basis for reversal or remand. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the local government adopts a finding of current compliance and imposes conditions to ensure compliance with an approval criterion, that those conditions require additional informal review by local government staff does not mean that the local government has impermissibly “deferred” a finding of compliance with that criterion to a later stage without notice or hearing. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Under ORS 197.763(2)(a)(C), the owners of property that is located within specified distances of the “subject property” must be given notice of a hearing concerning a permit to allow development of the “subject property.” In identifying the property owners who are entitled to notice of hearing under that statute, a newly proposed access road crossing federally owned property pursuant to a federal permit is properly viewed as

part of the “subject property” to be developed. *Shrader v. Deschutes County*, 39 Or LUBA 782 (2001).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.047 imposes specified notice requirements where statutes or administrative rules “limit or prohibit otherwise permissible uses.” A statute that expands the list of authorized uses does not implicate the ORS 197.047 notice requirements. *Keicher v. Clackamas County*, 39 Or LUBA 521 (2001).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a county fails to provide 45 days’ advance notice to the Department of Land Conservation and Development prior to the first hearing on a post acknowledgment plan amendment, and provides no explanation for why emergency circumstances warrant shorter notice, the county’s decision must be remanded. *Donnell v. Union County*, 39 Or LUBA 419 (2001).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.763(3)’s requirement that a notice of hearing shall provide “a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings” does not require that the notice of hearing include notice of a contingent right under a city’s code to conduct cross-examination of witnesses. *Mitchell v. Washington County*, 39 Or LUBA 240 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Failure to provide proper notice pursuant to ORS 197.763(3) is a procedural error and does not provide a basis for reversal or remand unless the error prejudices a party’s substantial rights. *Lange-Luttig v. City of Beaverton*, 39 Or LUBA 80 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where petitioners appeared below and testified about the uses that would be authorized by a conditional use permit, petitioners may not claim that their substantial rights were prejudiced by a local government’s failure to specifically identify all proposed uses in the notice of the hearing. *Lange-Luttig v. City of Beaverton*, 39 Or LUBA 80 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The notice of the date of final hearing required by ORS 197.610(1) (1997) and OAR 660-018-0020(1) safeguard the ability of the Department of Land Conservation and Development and other interested parties to participate in proceedings leading up to decisions amending comprehensive plan and code provisions. The failure of a local government to submit notice at least 45 days before the date stated as the final hearing obviates the appearance requirement of ORS 197.830(2) and ORS 197.610(2)(b), even if another hearing is conducted at least 45 days after the submission of notice. *OTCNA v. City of Cornelius*, 38 Or LUBA 921 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A city’s failure to provide notice that it considered a particular comprehensive

plan goal to be an approval criterion is a procedural error, and where that failure denies the applicant an opportunity to present argument and evidence concerning that plan goal, the procedural error prejudices the applicant's substantial rights. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Because a local government's proceedings on remand from LUBA are a continuation of its original proceedings and not a new proceeding, a local government that has sent notice of a proposed post-acknowledgment plan amendment to DLCD as required by ORS 197.610 is not required under the statute or rules implementing the statute to send additional notice of the proposed amendment during the remand proceedings. *Northwest Aggregates Co. v. City of Scappoose*, 38 Or LUBA 291 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The requirement at ORS 197.610(1) (1997) that local governments send notice of comprehensive plan and land use regulation amendments to the Department of Land Conservation and Development at least 45 days before the "final hearing on adoption" refers to the final *evidentiary* hearing, and does not refer to nonevidentiary proceedings where the local government actually adopts the amendment. *Home Depot, Inc. v. City of Beaverton*, 37 Or LUBA 1020 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a local government adopts plan or land use regulation amendments but fails to provide the Department of Land Conservation and Development with timely notice as required by ORS 197.610(1), the Department or any other person has standing to appeal the decision to LUBA notwithstanding failure to appear before the local government. *Home Depot, Inc. v. City of Beaverton*, 37 Or LUBA 1020 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where petitioner fails to allege that it was entitled to written notice of hearing under Ballot Measure 56, a local government's failure to provide written notice of hearing under Ballot Measure 56 did not prejudice petitioner's substantial rights and provides no basis for reversal or remand. *Homebuilders Association v. City of Portland*, 37 Or LUBA 707 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.830(3) authorizes the filing of a notice of intent to appeal after the 21-day deadline specified by ORS 197.830(8) where the approved proposal differs in some significant way from the proposal that is described in the notice of hearing, such that the notice "did not reasonably describe the local government's final action." A multifaceted zoo conditional use master plan with a permanent parking lot does not so differ from a multifaceted zoo conditional use master plan with a temporary parking lot that the notice of hearing "did not reasonably describe the local government's final action." *Bigley v. City of Portland*, 37 Or LUBA 544 (2000).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.763(3) requires only that applicable local comprehensive plan and

ordinance provisions be listed in the notice of quasi-judicial proceedings. Failure to list applicable statutory criteria is not a basis for remand. *Friends of Linn County v. Linn County*, 37 Or LUBA 297 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

A notice of hearing that fails to describe any proposed uses that could be authorized by a decision to amend the zoning of property from residential to industrial is “different from the proposal described in the notice to such a degree” that the notice does not “reasonably describe the local government’s final action” and thus petitioner may raise new issues pursuant to ORS 197.835(4)(b) notwithstanding petitioner’s failure to raise those issues during the proceedings below. *Mulford v. Town of Lakeview*, 36 Or LUBA 715 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

A city commits procedural error where it fails to identify the relevant approval criteria in its notice of hearing or in its oral statement at the beginning of the hearing on a conditional use request. The city also commits procedural error where the staff report that identifies the relevant approval criteria is not made available seven days before the hearing and the report is only provided to the city council at the hearing. Where these errors contribute to confusion about the nature of the use for which approval is requested and the city’s legal theory for approving the request, petitioners’ substantial rights are prejudiced by the city’s procedural errors and remand is required. *Latta v. City of Joseph*, 36 Or LUBA 708 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

Petitioner’s failure to cite ORS 215.402 to 215.428 as authority for its position that the challenged decision required notice and an opportunity for a hearing does not require that LUBA reject the assignment of error where (1) it is clear from its brief that respondent was aware that ORS 215.402 to 215.428 require notice and an opportunity for a hearing for land use decisions that constitute “permits” under ORS 215.402(4), and (2) the city argues in its brief that the challenged decision does not constitute a “permit” decision, within the meaning of ORS 215.402(4). *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

A decision authorizing construction of facilities necessary to apply sewage effluent to farm land constitutes the approval of a “proposed development of land” and thus is a “permit” within the meaning of ORS 215.215.402(4) if the decision involves the exercise of discretion. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

A decision authorizing construction of a lagoon on EFU-zoned land to store treated effluent constitutes the approval of a “proposed development of land” and thus constitutes a “permit” within the meaning of ORS 215.402(4) if the decision involves the exercise of discretion. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

A city’s procedural error in failing to send notice of a hearing at which zone changes

affecting petitioner's property would be considered does not prejudice petitioner's substantial rights, where petitioner nonetheless participated in the hearing and the city continued the hearing to allow petitioner an adequate time to prepare. *Herman v. City of Lincoln City*, 36 Or LUBA 521 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A quasi-judicial plan and zone map amendment initiated by the city planning commission is an “application for a land use decision,” for purposes of the notice requirements of ORS 197.763(3), and thus the city's notice of hearing must list the applicable criteria from its ordinance and plan. *Herman v. City of Lincoln City*, 36 Or LUBA 521 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Listing the “Comprehensive Plan goals, policies and land use map” as applicable criteria on the notice of hearing without listing specific applicable plan provisions is insufficient to satisfy ORS 197.763(3)(b), and such a general listing does not support a conclusion that petitioner could have raised issues regarding specific plan provisions below. *Herman v. City of Lincoln City*, 36 Or LUBA 521 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Although deficiencies in a hearings officer's notice of hearing may provide a basis for direct appeal of the hearings officer's decision to LUBA under ORS 197.830(3), where a local appeal is filed and the city council makes a decision in the appeal, the hearings officer's decision is not the city's final decision and is not subject to appeal to LUBA under ORS 197.830(3). *Bigley v. City of Portland*, 36 Or LUBA 517 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Petitioner may raise new issues before LUBA regarding plan provisions that were not considered by the county where the notice of hearing did not list any applicable comprehensive plan provisions. Petitioner is not obligated by ORS 197.835(4)(a) to comb through the entire comprehensive plan looking for applicable provisions omitted from the notice, in order to avoid a finding that issues regarding applicable plan provisions could have been raised below. *City of Newberg v. Yamhill County*, 36 Or LUBA 473 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A county's failure to explain in its notice of hearing that all evidence and the staff report would be available for review seven days before the hearing provides no basis for reversal or remand, where petitioner did not object to the adequacy of the notice, does not claim he was surprised by anything in the staff report and does not explain how his substantial rights were violated by the inadequate notice. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the county's notice of hearing failed to include notice of the procedures to be followed at the hearing, but petitioner did not object below to the inadequate notice and does not explain how his substantial rights were violated by the defective notice, the

notice defect provides no basis for reversal or remand. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

A petitioner does not waive his right to object to the county's failure to list the applicable criteria governing permit revocation in the notice of hearing by failing to object below, where it was not clear until the end of the hearing what criteria would be applied or that the decision makers intended to revoke petitioner's permit. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

Where petitioner was provided a local appeal and hearing before the county governing body, the failure of the planning commission to give notice before its hearing of the criteria that it intended to apply or that it intended to revoke petitioner's permit provides no basis for reversal or remand, where petitioner does not explain why the appeal to the governing body was inadequate to avoid any prejudice to his substantial rights. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

Where a local government approves a preliminary planned unit development application based on findings of current compliance with applicable criteria, an argument that the local government impermissibly deferred findings of compliance with applicable criteria to a second stage of review where notice and hearing requirements are not observed is more appropriately framed as an inquiry into whether the findings of current compliance are adequate and supported by substantial evidence. *Salo v. City of Oregon City*, 36 Or LUBA 415 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

The property that is the "subject of the notice," within the meaning of ORS 197.763(2)(a), depends on the proposal being considered. Where an applicant for subdivision approval proposes construction of a right-of-way across a parcel that adjoins the parcel to be subdivided, the notice must be given to the properties within the distances specified by ORS 197.763(2)(a) from both the adjoining parcel and the subdivided parcel. *Warrick v. Josephine County*, 36 Or LUBA 81 (1999).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

A county procedure that does not require that all of the information required by ORS 215.416(11) and 197.763(3) be included in the notice of hearing on a local appeal of a permit decision violates the statutes. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing.

A county procedure that does not require that notice of hearing be given to all of the persons who are entitled to notice of hearing on a permit under ORS 197.763(2) violates the statute. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the zoning ordinance requirements for giving notice of permit hearings are inconsistent with statutory requirements, the statutory conflict is not rendered harmless error by a zoning code requirement that the county give "any other notice required by law." *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A *pro forma* declaration of "emergency circumstances," unaccompanied by stated reasons directed at the necessity for expedited review, is insufficient to satisfy ORS 197.610. Cited concerns about unregulated development in the floodplain constitute a sufficient declaration of emergency under ORS 197.610 to allow expedited adoption proceedings. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Even if a local government's notice is not sufficiently specific to identify all approval criteria, petitioner fails to establish any prejudice to its substantial rights when the approval criteria are identified in a staff report and petitioner was in fact made aware of and addressed the criteria in the proceedings below. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the notice of a hearing fails to list all of the criteria required for approval of an application, that procedural error does not prejudice petitioners' substantial rights where all of the applicable criteria were raised and addressed at the public hearing. *Turrell v. Harney County*, 34 Or LUBA 423 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. If the city committed a procedural error by approving final subdivision and PUD plans without providing a hearing or opportunity for local appeal, such error provides no basis for remand where the petitioner at LUBA was allowed to submit 65 pages of comments to the city prior to its decision. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a local government provides no prehearing notice of a proposed amendment as required by statute, and thus fails to provide a reasonable description of the nature of the local government's proposed decision, the exception to the appearance requirement set forth in ORS 197.620(2) applies. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's failure to list a possible zoning restriction in the notice of hearing, as required by ORS 197.763, is harmless error, where the zoning restriction is a basis for imposing conditions rather than an approval standard. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the notice of hearing contained an error in identifying the zoning map designation being requested, the error provides no basis for reversal or remand where the error had no effect on the approval standards the zone change request was subject to and therefore resulted in no prejudice to petitioner. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Identification of a development code section number is sufficient to provide notice of the applicable criteria in a notice of hearing. It is not necessary to interpret the development code section in the notice of hearing to identify the portions of the identified development code section that institute mandatory approval criteria. *Fjarli v. City of Medford*, 33 Or LUBA 451 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's findings cannot defer a determination on discretionary approval criteria to a later stage without providing the same notice and comment period provided in the initial proceeding. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Under ORS 197.763(8) a local government has a duty to give notice of quasi-judicial land use hearings, but does not have a duty to ensure the notice is received. *Epling v. Washington County*, 33 Or LUBA 392 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A county's failure to use the most recent property tax assessment rolls in generating its notice mailing list is not error, where the county establishes by affidavit, as required by ORS 197.763(8), that it actually mailed notice to petitioner's residence. *Epling v. Washington County*, 33 Or LUBA 392 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the county's first notice to petitioner was faulty and was not received before the initial local hearing, but a second notice that complied with ORS 197.763(8) was sent before subsequent local hearings, a petitioner is not denied his right to a hearing and is not excused from his obligation to file a timely notice of intent to appeal with LUBA. *Epling v. Washington County*, 33 Or LUBA 392 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The provision of ORS 197.610(2) allowing "less than 45 days' notice" to the Director of DLCD of decisions adopting new land use regulations in emergency circumstances does not authorize not giving any notice at all. *Western PCS, Inc. v. City of Lake Oswego*, 33 Or LUBA 369 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 215.060, which requires notice and public hearings prior to action by the governing body of a county "regarding the plan," does not apply to a statement on a

notice of adoption to DLCD that the Statewide Planning Goals do not apply to a newly adopted land use regulation. . *Petersen v. Columbia County*, 33 Or LUBA 253 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. To defer making a necessary discretionary determination beyond the date that a UGB amendment becomes final creates a possibility the UGB will be amended before Goal 14 is satisfied. Either (1) a determination that all standards requiring discretion in their application are satisfied must be made prior to the amendment of the UGB itself; or (2) the UGB amendment must be conditioned on making the necessary determination at a time subsequent when the statutory notice and hearing requirements are observed. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a party receives notice of a decision and subsequent appeal, and the record contains no evidence that the party attempted to appear at the hearing, that party cannot claim that it was denied the opportunity to participate in the appeal hearing when it had no notice of the withdrawal of the appeal. *DLCD v. Polk County*, 33 Or LUBA 30 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the notice provided by the city does not indicate that an application will be processed as a limited land use decision, and the application is in fact processed as a quasi-judicial land use decision under the provisions of ORS 197.763, the city will be required to provide all of the procedural safeguards required for land use decisions. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The city's failure to provide petitioner with the notice of hearing to which she was entitled under ORS 197.763(2) effectively denied petitioner the right to participate in the hearings process and to present evidence, thereby violating her substantial rights. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the notice provided by the city of a proposed partition provides a complete street address, and includes an illustration of the property subject to the partition, that notice is not rendered inadequate by a failure to specify that the partition will involve two parcels. *Thierolf v. City of Ashland*, 32 Or LUBA 182 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The county's failure to provide adequate notice of a proposed goal exception under ORS 197.732(5) is a procedural error that will not result in reversal or remand where the record demonstrates that petitioners' substantial rights were not prejudiced. *Middleton v. Josephine County*, 31 Or LUBA 423 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. At a minimum, ORS 197.732(5) requires that the county's notice of a proposed

goal exception must include a brief summary of the issues involved in the proposed exception, in addition to the list of applicable criteria required by ORS 197.763(3)(b). *Middleton v. Josephine County*, 31 Or LUBA 423 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the city's notice of hearing describes only a proposed zone change, and not the proposed general development plan or tentative plan for a subdivision, the city's notice violates ORS 197.763(3). *Tucker v. City of Adair Village*, 31 Or LUBA 382 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The "most recent county property tax assessment roll" to which ORS 197.763(2)(a) refers is the property tax assessment roll, whether printed out or not, that shows, as nearly as possible, the current ownership of each property in the county and that notes any property owner's change of address. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A county may not rely on its failure to update its tax rolls as soon as possible to defeat the purpose of the notice requirement stated in ORS 197.763. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 215.416(11)(a), which requires notice and an opportunity for appeal of a decision made without a hearing be provided to "those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision," establishes two categories of people to whom notice must be given. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.830(b), which allows appeals "within 21 days of the date a person knew or should have known of the decision where no notice is required," does not apply where city and county provide properly noticed hearings of proceedings to amend local zoning ordinances. *Waite v. City of La Grande*, 31 Or LUBA 77 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a local ordinance specifies that board of commissioner hearings are conducted on the record, and where petitioners establish no violation of any statutory notice requirement, petitioners establish no basis for relief in alleging that they relied on various notices, which appeared to petitioners to be contradictory, to conclude they were not required to present all evidence before the planning commission, but would be able to present their case *de novo* before the board of commissioners. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1996).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's violations of the notice provisions of ORS 197.763 in its

original proceedings do not permit a petitioner who fails to raise certain issues during proceedings on remand to elude the waiver provisions of ORS 197.835 during a second appeal to LUBA. *Noble v. City of Fairview*, 30 Or LUBA 180 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. When petitioner was apprised by the local government of the applicable criteria, but failed to raise an issue before the local government during proceedings on remand, ORS 197.835(3) precludes petitioner from raising the issue on appeal to LUBA. *Noble v. City of Fairview*, 30 Or LUBA 180 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government that intends to process limited land use decisions differently from land use decisions must, under ORS 197.195(2)(c)(I), either make that intent clear in the initial notice or provide all of the ORS 197.763 procedural safeguards. *Gensman v. City of Tigard*, 29 Or LUBA 505 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a local government makes a permit decision without a hearing, pursuant to local procedures implementing ORS 215.416(11) or 227.175(10), the provisions of ORS 197.830(3) allowing a person to appeal a decision to LUBA if the local government does not provide a hearing do not apply, because the local government did not fail to provide a hearing or the notice of such hearing required by state or local law. *Tarjoto v. Lane County*, 29 Or LUBA 408 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. General notice of the applicability of a local government's mineral and aggregate code chapter does not provide adequate notice of the applicability of local floodplain permit requirements, when the mineral and aggregate code chapter does not clearly establish the applicability of the floodplain permit requirements. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's failure to provide notice that it was considering a floodplain permit application was a procedural error which prejudiced petitioners' substantial rights because the error deprived petitioners of an adequate opportunity to address floodplain issues relevant to local floodplain permit requirements. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's failure to provide notice of its hearings to persons other than petitioners is a procedural error that does not prejudice petitioners' substantial rights if petitioners received notice of the local government hearings and participated in them. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. If a local government fails to give a person an individual written notice of

hearing to which that person is entitled under state or local law, the local government fails to provide a hearing with regard to that person, within the meaning of ORS 197.830(3). *Orenco Neighborhood v. City of Hillsboro*, 29 Or LUBA 186 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Listing an entire zoning ordinance as the applicable criteria in a local government's notice of its initial evidentiary hearing on a quasi-judicial land use application does not satisfy ORS 197.763(3)(b). Neither does listing entire chapters of the zoning ordinance, where such chapters contain criteria for several different types of applications. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the local government wishes to defer a determination of compliance with an applicable approval standard it must ensure that the later approval process provides any statutorily or locally required notice and an opportunity for input. *Hilderbrand v. Marion County*, 28 Or LUBA 703 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.763(8) applies only to a local government's notice of its initial evidentiary hearing. It does not apply to local hearings conducted after remand by LUBA. *Collins v. Klamath County*, 28 Or LUBA 553 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the local government's notice of its first evidentiary hearing before the planning commission failed to list the applicable standards, as required by ORS 197.763(3)(b), petitioners may raise issues at LUBA even though such issues may not have been raised during the local proceedings. However, this procedural error provides no basis for reversal or remand of the decision where petitioners fail to establish the error caused prejudice to their substantial rights. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a local government fails to list a single applicable approval criterion in its notice of initial evidentiary hearing, issues may be raised at LUBA even though they were not raised during the local proceedings. *Lamm v. City of Portland*, 28 Or LUBA 468 (1995).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the challenged decision includes a determination that a nonconforming use of the subject property exists, but the notice of hearing indicated the only issue to be addressed was an expansion of an existing nonconforming use, the notice of hearing failed to adequately describe the nature of the application, as required by ORS 197.763(3)(a), and failed to reasonably describe the county's final action under ORS 197.835(2)(b). Either of these deficiencies means petitioners may raise issues before LUBA regardless of whether they were raised below. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 215.416(5) and 197.763(3)(b) require a county to identify applicable approval standards in its notices of hearing. Where petitioner's right to participate in the local proceedings is impaired by the county's failure to identify relevant standards, the challenged decision must be remanded. *Murphy Citizens Advisory Comm. v. Josephine County*, 28 Or LUBA 274 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A statement that a list of applicable criteria will be available at City Hall seven days prior to the hearing does not satisfy the requirements of ORS 197.195(3)(b) that the notice of proposed action list the applicable criteria. *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the notice of public hearing given by the local government is inadequate, such that it does not "reasonably describe the local government's final [decision]," ORS 197.830(3) potentially provides a person adversely affected by the inadequate notice a right to file an appeal at LUBA long after the local decision is reduced to writing, notice of the decision is given, and the decision otherwise becomes final. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.830(3) imposes a requirement that a reasonable person be able to tell from the notice of public hearing that the local government might take the action that the local government ultimately takes. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. While changes in the proposal described in a notice of public hearing can be of such a degree that the notice "did not reasonably describe the local government's final [decision]," not every change in the proposal described in the notice of public hearing necessarily implicates ORS 197.830(3). *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.763(3)(c) does not require that the addresses of all properties included within a proposal for quasi-judicial land use approval be set out in the notice of public hearing. An "easily understood geographical reference" may be provided instead. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A notice of local hearing that includes a map showing all three tax lots included in a proposal is adequate to "reasonably describe the local governments final [decision]," within the meaning of ORS 197.830(3), notwithstanding the failure of the notice to list each tax lot's address and the attachment of other maps to the notice which show only a portion of the property. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Absent local code provisions analogous to ORS 197.830(3), where a notice of local hearing in a quasi-judicial land use proceeding fails to adequately describe the action ultimately taken by the local government and the time for filing a local appeal has expired, an adversely affected person's exclusive route of appeal is directly to LUBA. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A statement that the requested Willamette River Greenway permit is to allow placement of a dwelling on the identified subject property is sufficient to satisfy the requirement of ORS 197.763(3)(a) that the notice of hearing "[e]xplain the nature of the application and the proposed use or uses which could be authorized." *Reeves v. Yamhill County*, 28 Or LUBA 123 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the relevant local government notices did not list the applicable approval criteria, as required by both ORS 197.763(3)(b) and 197.195(3)(c)(C), then regardless of whether the challenged decision is a land use decision or limited land use decision, issues may be raised before LUBA irrespective of whether they were raised during the proceedings below. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. If a county implements ORS 215.418(1) by providing in its code that it will notify DSL of "developments" in wetlands identified on the State-wide Wetlands Inventory, it must interpret "developments" consistently with the types of development applications and approvals for which such notice is required by ORS 215.418(1)(a)-(e). *Redland/Viola CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the record shows petitioner was aware of the applicable approval criteria in the comprehensive plan and participated effectively in the local hearing, a local government's failure to comply with the requirements of ORS 197.763(3)(b) and (j), regarding listing applicable criteria from the plan and explaining hearing procedures in its notice of hearing, does not prejudice petitioner's substantial rights or provide a basis for reversal or remand. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.763(3)(b) and (5)(a) require a local government to provide notice of the standards applicable to an application for a quasi-judicial land use decision, prior to its hearing on such an application. *Laine v. City of Rockaway Beach*. 27 Or LUBA 493 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where certain comprehensive plan and code provisions are mentioned in the local government's decision, but are not applied as approval criteria for the subject

application, ORS 197.763(3)(b) does not require that those provisions be listed in the local government's notice of hearing. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where petitioners presented evidence and argument concerning the necessity for a solar height adjustment and argued the relevant standards were not met, the city's procedural error in not providing notice that it would consider approval of the solar height adjustment did not prejudice petitioners' substantial rights and provides no basis for reversal or remand. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's failure to make available all evidence in support of a quasi-judicial land use application at the time the notice of hearing is provided, as required by ORS 197.763(4)(a), is a procedural error. However, if such evidence is made available prior to or at the hearing and the hearing record is left open for seven days to allow time for additional written testimony from the parties, petitioners' substantial rights are not violated. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the applicant submits a new application following remand by LUBA of a decision approving an earlier application, a local government is under no obligation to include the record of the prior application or to provide explicit notice that parties have to submit evidence from the previous record that they wish the local government to consider in reviewing the new application. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.763(3)(b) requires a local government to identify, in its notice of hearing on a quasi-judicial land use application, *which* comprehensive plan goals and policies the local government considers to be "applicable" criteria for the subject application. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Local government failure to comply with ORS 197.763(3) notice of hearing requirements (1) means that under ORS 197.835(2)(a), LUBA may consider issues that were not raised below; and (2) is a procedural error which, under ORS 197.835(7)(a)(B), provides a basis for reversal or remand of the challenged decision only if such error prejudices petitioners' substantial rights. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A statement in the local government notice of hearing required under ORS 197.763(3), to the effect that the applicable criteria can be reviewed at the local government planning office, does not constitute listing the applicable criteria, as is required by ORS 197.763(3)(b). *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The hearing notice content requirements of ORS 197.763(3) apply to the notice ORS 197.763(3)(f) requires to be given a certain number of days before the local government's *evidentiary* hearing on a quasi-judicial land use application. They do not apply to notice of a hearing by the governing body on such application, based on the record before a lower local body. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A statement that applicable criteria can be viewed at the local government planning office does not satisfy the requirement of ORS 197.763(3)(b) that a local government hearing notice list the applicable criteria from the comprehensive plan and ordinances. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A statement that failure to raise an issue before the planning commission precludes appeal to the local governing body does not satisfy the requirement of ORS 197.763(3)(e) that a local government hearing notice include a statement that failure to raise an issue precludes appeal to LUBA on that issue. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. While a showing of prejudice to substantial rights is generally required in order to secure a remand for procedural error, no such showing is required to secure a remand where the procedural requirements of ORS 215.060 are not followed. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The notice of hearing required by ORS 215.060 must designate the property involved such that the recipients of the notice can reasonably ascertain from it that property in which they are interested may be affected by the proposed action. *Fifth Avenue Corp. v. Washington Co.*, 282 Or 591, 581 P2d 50 (1978). *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the notice of a public hearing that preceded adoption of a comprehensive plan amendment did not clearly identify the geographic scope of the plan amendment, the notice nevertheless was adequate to comply with ORS 215.060 where the plan amendment was preceded by an extensive public participation process such that a reasonable person could have ascertained from the notice what property might be affected. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's failure to specifically state the location of a continued hearing on a comprehensive plan amendment when announcing the continuation is

harmless error, where the continued hearing was held at the same place as the hearing from which it was continued and petitioners appeared at and participated in the continued hearing. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a challenged decision does not purport to amend an acknowledged plan or land use regulation, the requirement of ORS 197.610(1) for notice to DLCD of a proposed post-acknowledgment amendment is not applicable. In such circumstances, a local government's failure to give DLCD the notice required by ORS 197.610(1) does not obviate the appearance requirement of ORS 197.830(6)(b) for intervention by DLCD in an appeal before LUBA. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. In rendering a decision on a permit, a city is required to hold at least one public hearing or provide notice of the decision and an opportunity for an appeal. A city's failure to do so requires that the decision be remanded. *Hood River Sand v. City of Mosier*, 24 Or LUBA 381 (1993).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's failure to provide a person with a required individual written notice of hearing is not sufficient, by itself, to entitle that person to be given individual written notice of the decision or to toll the 21 day deadline for filing a notice of intent to appeal with LUBA until individual written notice of the decision is provided. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a local government fails to give a person an individual written notice of hearing to which the person is entitled, the local government fails to provide a hearing with regard to that person, within the meaning of ORS 197.830(3). *Leonard v. Union County*, 24 Or LUBA 362 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. LUBA will only reverse or remand a challenged decision on procedural grounds where the error causes prejudice to petitioner's substantial rights. A local government's failure to list certain DEQ rules in the notice of hearing does not prejudice petitioner's substantial rights, where petitioner was provided an opportunity to respond to those DEQ rules during the local proceedings *Stockwell v. Clackamas County*, 24 Or LUBA 358 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Even if petitioner were entitled under state statute to notice of local government hearings on comprehensive plan and land use regulation amendments and goal exceptions, and the local government failed to provide that notice, petitioner's notice of intent to appeal would only be timely if it was filed within 21 days after petitioner received actual notice of the challenged decision. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The requirement of ORS 197.830(6)(b) that a person wishing to intervene in an appeal at LUBA have appeared during the local government proceedings is obviated where a city fails to observe statutory notice and hearing requirements of ORS 227.173 and 227.175 prior to issuing the challenged decision granting approval for a permit. *Hood River Sand v. City of Mosier*, 24 Or LUBA 604 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government may, by imposing conditions or otherwise, defer a final determination concerning compliance with an applicable permit approval standard to a later stage. However, if the decision to be made at the later stage is itself discretionary, the approval process for the later stage must provide the statutorily required notice and opportunity for hearing, even though the code may not require such notice and hearing. *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where some of the notices preceding local government quasi-judicial hearings on a land use application failed to identify applicable approval criteria, but the notice of the first hearing identified the applicable approval criteria and the record shows all parties were aware of the applicable criteria, the notice errors are at most procedural errors which did not prejudice the parties' substantial rights. Such errors provide no basis for reversal or remand. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the local government fails to identify the relevant plan and land use regulation standards in the notice of hearing, a petitioner is free to raise noncompliance with those standards in an appeal to LUBA, even though compliance with such standards was not raised as an issue below. *Ruff v. Harney County*, 23 Or LUBA 521 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. By statute, adjoining property owners within specified distances of property for which discretionary development approval is requested are entitled to notice of the local proceedings and an opportunity for a public hearing. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a local government concludes a permit applicant has submitted insufficient evidence to demonstrate it is feasible to comply with an applicable approval criterion, it may defer the required determination of compliance with that standard to a later stage in the approval process, but must assure that statutory notice and hearing requirements are observed in that later stage of approval. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Because OAR 660-12-060 is not part of a county's ordinances or comprehensive plan, it need not be listed as an applicable criterion under

ORS 197.763(3)(b), and the county's failure to so list OAR 660-12-060 as an applicable criterion in its notice of hearing does not excuse petitioner from having to raise the issue of compliance with OAR 660-12-060 during the proceedings below in order to have it reviewed by LUBA. *ODOT v. Clackamas County*, 23 Or LUBA 370 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Even if a local government erred by failing to provide notice of local hearings following remand from LUBA to persons other than parties in the LUBA appeal, that failure results in no prejudice to the substantial rights of the parties who did receive notice of the local hearings on remand. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The failure of local notices of hearing to summarize the issues involved in a proposed goal exception, as required by ORS 197.732(5), constitutes procedural error and does not provide a basis for reversal or remand of the challenged decision in the absence of prejudice to petitioner's substantial rights. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where no specific use is proposed in conjunction with a zone change, the notice of hearing is not required to indicate all of the possible uses of the property under the proposed new zone. However, where a reasons goal exception for a particular use is also proposed, ORS 197.763(3)(a) requires that the notice of hearing identify the particular use proposed to be made of the property. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Local government failure to comply with ORS 197.763(3) notice of hearing requirements (1) is a procedural error, which will result in reversal or remand of the challenged decision only if such error prejudices petitioner's substantial rights; and (2) under ORS 197.835(2)(a), allows LUBA to consider issues that were not raised below. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. A local government's failure to include notice of the right to request a continuance under ORS 197.763(4)(b) or that the record be held open under ORS 197.763(6) in the notice of hearing required by ORS 197.763(3) is procedural error, and the parties' substantial rights are violated where it is clear from the record that they would have exercised such rights if they had known about them. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where adoption of the challenged decision required the exercise of factual and legal judgment, the decision required the exercise of discretion and, consequently, approves a "permit." Under these circumstances, it is error for the local government to

fail to provide petitioner with notice and opportunity for hearing, where at least some of petitioner's members were entitled to notice if a public hearing had been scheduled. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. ORS 197.763(3)(b) does not require a local government to list related code provisions as "applicable criteria" in its notice of a quasi-judicial land use hearing in order to be able to consider them in interpreting the central code provisions at issue consistently with such related code provisions. *Ward v. City of Lake Oswego*, 21 Or LUBA 470 (1991).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a local code standard which petitioners allege is violated by the challenged decision was not identified as an applicable standard in the local government's notices of hearing, as required by ORS 197.763(3)(b), petitioners may raise the issue of compliance with that local code standard in a LUBA appeal, even though they did not raise the issue during the local proceedings. ORS 197.835(2)(a). *Southwood Homeowners Assoc. v. City of Philomath*, 21 Or LUBA 260 (1991).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The notice of hearing to "other interested persons" required by ORS 227.175(5) requires that a city provide notice beyond that provided to the applicant. A city may not rely on its failure to provide in its code for notice to persons other than the applicant to argue no such notice is required by law. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where there is no local appeal available and a local government fails to provide the notice of hearing or hearing required by ORS 227.175(3) and (5) or 215.416(3) and (5) before making a decision on a permit, such permit decisions may be appealed to LUBA within 21 days after a person receives actual notice of the permit decision. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The failure of a local government to identify its general procedures for the conduct of hearings in its notice of hearing, as required by ORS 197.763(3)(j), is a procedural error, for which LUBA is empowered to reverse or remand the challenged decision only if such error "prejudiced the substantial rights of the petitioner." ORS 197.835(7)(a)(B). *Stefan v. Yamhill County*, 21 Or LUBA 18 (1991).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Generally, the failure to send notice of hearing to parties other than petitioner would not prejudice the substantial rights of petitioner, so long as petitioner received proper notice. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where the record demonstrates that petitioner was fully aware of the criteria applicable to its land use application prior to the local hearing, local failure to comply with the requirement of ORS 197.763(3)(b) that notice of hearing list applicable plan and code approval criteria did not prejudice petitioner's substantial rights. ORS 197.835(7)(a)(B). *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Under ORS 197.763(3)(j), a local government is required to provide in its notice of hearing a general explanation regarding the right under ORS 197.763(6) to request that the record of the initial evidentiary hearing remain open. A local government's failure to provide such notice is a procedural error which, if it prejudiced the parties' substantial rights, would require reversal or remand of the challenged decision. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. When there is no specific proposed use, as in the case of a simple zone change, the requirement of ORS 197.763(3)(a) that notices of quasi-judicial land use hearings "explain the nature of * * * the proposed use or uses which could be authorized" does not apply, and it is sufficient if the notices of hearing explain that the application is for a change from one identified zoning district to another identified zoning district. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421 (1990).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. The provisions of ORS 197.763, which became effective October 3, 1989, concerning required notice of quasi-judicial hearings do not apply to hearings held before October 3, 1989. *Torgeson v. City of Canby*, 19 Or LUBA 623 (1990).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. If the notice of hearing required by ORS 227.175(5) fails to indicate the possibility of the final action actually taken by the city, a petitioner's notice of intent to appeal to LUBA is timely if filed within 21 days after petitioner received actual notice of the decision. *Torgeson v. City of Canby*, 19 Or LUBA 623 (1990).

25.3.3 Local Government Procedures – Compliance with Statutes – Notice of Hearing. Where a county finds applicable approval standards are or can be met and grants first stage PUD approval, but includes a condition that (1) final grading and drainage plans be submitted later, and (2) approval of such plans follow a procedure that does not provide notice or an opportunity for further public involvement, the proper way to challenge the county's decision to proceed in such a manner is to appeal the first stage PUD approval decision. Parties may not fail to challenge that decision and appeal the subsequent approval of the final grading and drainage plans, arguing that such approvals are permits subject to the notice and hearing requirements of ORS 215.416, and that their failure to "appear" or file an appeal of such approvals within 21 days is excused because

of the county's failure to observe such notice and hearing requirements. *J.P. Finley & Son v. Washington County*, 19 Or LUBA 263 (1990).