

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the petitioner was given notice that the county’s land use code was on appeal and, if remanded, would revert to the old code, which required exhaustion of appeals to the governing body, and prior to the date the hearings officer’s decision becomes final the county code is remanded, thus reinstating the old code, the petitioner fails to exhaust all available remedies if it appeals the hearings officer’s decision directly to LUBA without filing a local appeal with the governing body. *McDougal Brothers, Inc. v. Lane County*, LUBA Nos 2020-046/047/048/049 (Apr 13, 2021).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Failure to meet the preservation requirement of ORS 197.763(1) and ORS 197.835(3) and the exhaustion requirement of ORS 197.825(2)(a) and *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), rev den, 336 Or 615 (2004), removes issues from the scope of LUBA’s review; it does not deprive LUBA of jurisdiction to review final land use decisions. *Nehmzow v. Deschutes County*, 81 Or LUBA 571 (2020).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the petitioner’s local appeal statement did not address an access easement and did not address, either by citation or reference to the operative language, a local code provision at all but, rather, included general statements regarding the petitioner’s concern with the increased traffic that a development would create, the principle of exhaustion-waiver articulated in *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), rev den, 336 Or 615 (2004), precludes petitioner from raising the issues raised in those assignments of error at LUBA. *Sanga v. City of Eugene*, 81 Or LUBA 236 (2020).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a petitioner files a local appeal of a decision and the local government rejects the local appeal, the petitioner has exhausted all remedies available by right, within the meaning of ORS 197.825(2)(a). *Hood River Valley Residents’ Committee v. Hood River County*, 77 Or LUBA 1 (2018).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a petitioner files a local appeal of a decision and the local government initially accepts the appeal and schedules a hearing, but later cancels the hearing and rejects the local appeal, the petitioner has exhausted all remedies available by right, within the meaning of ORS 197.825(2)(a). *Hood River Valley Residents’ Committee v. Hood River County*, 77 Or LUBA 7 (2018).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a county’s land development ordinance provides petitioner with the right to appeal its staff decision to a hearings officer, whether the county’s provisions for appealing a planning director decision are permissive or mandatory, they are “remedies” that are “available by right” to petitioner, within the meaning of the ORS 197.825(2)(a) requirement that a petitioner exhaust available local remedies, and therefore LUBA lacks jurisdiction if petitioner did not avail herself of the county’s procedures for local appeal. *Levy v. Jackson County*, 75 Or LUBA 401 (2017).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A petitioner does not fail to exhaust administrative remedies within the meaning of ORS 197.825(2) by failing to file a local appeal of a decision made under the county’s “ministerial review procedures” where the local code provides only the applicant with the right to appeal a decision to deny a permit using those ministerial review procedures. *Agnew v. Josephine County*, 75 Or LUBA 527 (2017).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The interplay between ORS 197.830(3), allowing an extended 21-day period to appeal certain decisions directly to LUBA, and ORS 197.825(2)(a), requiring a party to exhaust all local appeals available by right, introduces jurisdictional uncertainty in some cases. Where the petitioner prudently requests a local appeal and also files a direct appeal to LUBA, LUBA typically suspends the LUBA proceeding until the local government determines whether a local appeal is available. *Friends of the Lostine v. Wallowa County*, 75 Or LUBA 546 (2017).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A remedy that would remove the matter entirely from LUBA’s review, such as requesting that a circuit court vacate a judgment related to a county land use decision, is not a remedy available “by right” that a petitioner must exhaust prior to seeking LUBA’s review over the related land use decision. *Rogue Advocates v. Jackson County*, 74 Or LUBA 38 (2016).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** If opponents of land use approval fail to comply with one or more mandatory requirements for perfecting a local appeal, but the county governing body nevertheless accepts the local appeal and renders a decision on the merits affirming the land use approval, opponents’ failure to comply with those mandatory requirements may provide a basis for reversing the governing body’s decision, but such failures do not mean opponents’ LUBA appeal must be dismissed for failure to exhaust administrative remedies. *Kaplowitz v. Lane County*, 74 Or LUBA 601 (2016).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Generally, where a local appeal is available, that local appeal must be exhausted before filing an appeal with LUBA. *Housing Land Advocates v. City of Happy Valley*, 73 Or LUBA 405 (2016).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A petitioner is not required to appeal a planning commission decision approving a comprehensive plan map amendment to the city council, where under applicable law a decision by the city council is required in any event to make the comprehensive plan map amendment final and effective. In that circumstance, a petitioner is not required by ORS 197.825(2)(a) to exhaust a remedy that would do no more than require the city council to do what applicable statutes and Goal 2 already require the city council to do. *Housing Land Advocates v. City of Happy Valley*, 73 Or LUBA 405 (2016).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a cross petition for review challenges the local government’s application of a standard to a proposal for needed housing on the basis that the city may not apply the standard because it is not a “clear and objective standard” within the meaning of ORS 197.307(4), the cross petition for review may assign error to the city’s application of the standard only if the issue was raised in the applicant’s appeal statement appealing the hearings officer’s decision to the planning commission, under ORS 197.825(2)(a) and the reasoning in *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003). *SE Neighbors Neighborhood Assoc. v. City of Eugene*, 68 Or LUBA 51 (2013).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The exhaustion waiver principle articulated in *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), is based in part on ORS 197.763,

which applies to quasi-judicial land use decisions but does not apply to legislative land use decisions, and in part on the ORS 197.825(2)(a) exhaustion of remedies requirement. Therefore the *Miles* exhaustion waiver principle does not apply in an appeal of a legislative decision where there were no right of local appeal and no remedies to exhaust. *Central Oregon Landwatch v. City of Bend*, 68 Or LUBA 173 (2013).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** ORS 197.825(2)(a) and *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), do not limit the issues before LUBA to those issues specified in the local appeal to the governing body, where the local government’s appeal regulations do not require specification or limitation of issues for that type of local appeal, and the governing body allowed and considered all issues raised by any party during the appeal proceeding. *White v. Lane County*, 68 Or LUBA 423 (2013).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a petitioner receives actual notice of a decision issued without a hearing and pursues a local appeal, any right to directly appeal the decision to LUBA pursuant to ORS 197.830(3) may be lost if it turns out no right of local appeal exists and the petitioner delays longer than 21 days from actual notice of the decision to appeal the decision to LUBA. *Brodersen v. City of Ashland*, 66 Or LUBA 369 (2012).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** For the ORS 197.825(2)(a) exhaustion of local remedies requirement to serve its intended purpose, it is the decision rendered at the end of the local appeal process that must be appealed to LUBA, not the intermediate decision that led to the local appeal. *Jacobsen v. City of Winston*, 63 Or LUBA 405 (2011).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** LUBA will not dismiss an appeal for failure to exhaust the right of local appeal to the governing body, where the petitioner filed a notice of local appeal that mistakenly identified as the subject of appeal the initial planning director’s decision rather than the subsequent planning commission’s decision, but the governing body and all parties understood the appeal to concern the planning commission’s decision and the county in fact provided an appeal of the planning commission decision. *Oberdorfer v. Harney County*, 64 Or LUBA 47 (2011).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The ORS 197.825(2)(a) requirement that a petitioner at LUBA first exhaust available local remedies does not require that a petitioner appeal a local government decision that petitioner agrees with. If another party appeals that decision and the local government ultimately adopts a different decision that petitioner does not agree with, the petitioner may appeal to LUBA. *Families for a Quarry Free Neighborhood v. Lane County*, 64 Or LUBA 297 (2011).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Exhaustion of any available local remedies is a mandatory prerequisite for LUBA to have jurisdiction to review a decision. *Jacobsen v. City of Winston*, 63 Or LUBA 531 (2011).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** If a petitioner seeks a local appeal of a land use decision but terminates that local appeal before it is complete, the petitioner failed to exhaust

an available remedy and LUBA must dismiss a direct appeal of the land use decision. *Jacobsen v. City of Winston*, 63 Or LUBA 531 (2011).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** If a local government determines that petitioners abandoned their local appeal of a land use decision, but petitioners are allowed to pursue a local appeal of the abandonment determination, petitioners separate direct appeal of the underlying land use decision to LUBA must be dismissed, because petitioners have not yet exhausted their local appeal as required by ORS 197.825(2)(a). *Jacobsen v. City of Winston*, 63 Or LUBA 531 (2011).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A petitioner does not waive her right to challenge a city’s concept plan at LUBA by failing to appeal a Metro order finding that the concept plan complies with regional planning requirements, where Metro never conducted such a compliance review and never issued an order regarding compliance. *Graser-Lindsey v. City of Oregon City*, 59 Or LUBA 388 (2009).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where one LUBA petitioner filed a local appeal to the county board of commissioners but a second LUBA petitioner did not file her own local appeal, the second petitioner has nonetheless exhausted local remedies and will not be dismissed from a LUBA appeal of the commissioners’ decision. Even if the second petitioner is required to appear at the local appeal hearing in order to satisfy the exhaustion requirement, LUBA will not dismiss that petitioner where the governing body declines to review the underlying decision and conducts no hearing on the appeal at which the petitioner could have appeared. *Sommer v. Douglas County*, 59 Or LUBA 535 (2009).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), did not overrule or modify *Colwell v. Washington County*, 79 Or App 82, 91, 718 P2d 747 (1986), and similar cases holding that the ORS 197.825(2)(a) exhaustion requirement does not require a petitioner to file a local appeal of a lower body’s initial comprehensive plan amendment decision to the governing body, because applicable statutes require the governing body to conduct a hearing on the amendment in any event. *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Notwithstanding that a county’s code provides that the planning commission’s decision on a comprehensive plan amendment is “final” unless a local appeal is filed, under ORS 215.060 the county governing body must hold a public hearing on the plan amendment and take final action, and therefore the planning commission’s initial decision on the plan amendment is not “final” in any meaningful sense. *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Even where a county’s code provides for local appeal as one of three possible paths by which a governing body will review the planning commission’s initial decision on a comprehensive plan amendment, because ORS 215.060 requires the governing body to hold a public hearing on a plan amendment at which testimony and issues can be raised, in that circumstance a petitioner before LUBA is not required to file a local appeal and specify issues in a notice of local appeal in order to exhaust administrative remedies or avoid

waiver under *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003). *Wetherell v. Douglas County*, 58 Or LUBA 638 (2009).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a code provides for appeal of a planning commission decision to the governing body, the petitioner must exhaust that local remedy, even if the planning commission decision is part of a larger multi-step review process that will independently require additional proceedings before the governing body. The petitioner cannot instead of filing a local appeal of the planning commission decision wait to challenge that decision during the final proceedings before the governing body. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where intervenor-respondent argues that petitioners failed to exhaust administrative remedies but fails to identify the local administrative remedy that it believes was available, intervenor-respondent’s argument is insufficiently developed for review. *Zirker v. City of Bend*, 55 Or LUBA 188 (2007).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where an issue raised before LUBA was not included in the local notice of appeal filed by petitioners, the petitioners have failed to exhaust their remedies under ORS 197.825(2)(a) and are precluded from raising the issue under *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003). *Oregon Shores Conservation Coalition v. Coos County*, 55 Or LUBA 545 (2008).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The waiver principle in *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), applies to require that a petitioner at LUBA have raised an issue in the local notice of appeal, notwithstanding that the issue may have been raised earlier in the local land use proceeding. That waiver principle does not apply where consideration of a local application for land use approval does not include a local right of appeal. *Wasserburg v. City of Dunes City*, 52 Or LUBA 70 (2006).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a notice of local appeal appeals related subdivision and planned unit development (PUD) approvals, but refers to “residential subdivision” in challenging the type of residential use allowed under both approvals, the local government errs in concluding that the appeal raises issues only with respect to the subdivision and not the PUD, under the reasoning in *Miles v. City of Florence*, 190 Or App 500, 79 P3d 283 (2003). *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** While it is unusual for a petitioner to have to exhaust an appeal that is available before another unit of local government to challenge an annexation ordinance before appealing that annexation ordinance to LUBA, where applicable law provides that right of appeal and prevents the annexation ordinance from becoming final until that appeal is resolved, petitioner must exhaust that appeal before appealing to LUBA. *City of Happy Valley v. City of Damascus*, 51 Or LUBA 141 (2006).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where petitioners file a LUBA appeal to challenge a decision that petitioners mistakenly believed was a final county decision at the time the notice of intent to appeal was filed, and petitioners later file a local appeal to challenge that

same decision, LUBA must dismiss the appeal for failure to first exhaust local remedies. *Doyle v. Coos County*, 49 Or LUBA 397 (2005).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where it is clear that the land use decision that is identified in a notice of intent to appeal is an administrative conditional use permit approval that is also the subject of a local appeal, LUBA must dismiss the appeal and will not interpret that notice of intent to appeal as an appeal of other possible land use decisions. *Doyle v. Coos County*, 49 Or LUBA 397 (2005).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** LUBA will not extend the ORS 197.763(1) “raise it or waive it” requirement to legislative proceedings, and a failure to raise an issue under ORS 197.763 is not correctly characterized as a failure to exhaust administrative remedies. *Roads End Sanitary District v. City of Lincoln City*, 48 Or LUBA 126 (2004).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The logic of the exhaustion requirement at ORS 197.825(2)(a) dictates that, where the local government determines that the petitioner failed to perfect an otherwise available local remedy, LUBA has no jurisdiction over an appeal of the underlying decision. Under such circumstances, petitioner’s only recourse is to appeal the decision rejecting the local appeal and demonstrate to LUBA that the local government erred in determining that petitioner failed to perfect the local appeal. *Siuslaw Rod and Gun Club v. City of Florence*, 47 Or LUBA 615 (2004).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** If a county governing body correctly rejects an attempted local appeal as not properly perfected, the planning commission decision that was the subject of the attempted local appeal becomes the county’s final decision and a LUBA appeal seeking to directly challenge the planning commission decision will be dismissed for failure to exhaust available local remedies. *Burke v. Crook County*, 45 Or LUBA 516 (2003).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a county governing body determines that it has conflicts that prevent it from considering a local appeal of a planning commission decision, and rejects the appeal without identifying any appealable error on the local appellant’s part: (1) the local appellant is not obligated to seek LUBA review of the county governing body’s decision; (2) the local appellant has satisfied the statutory requirement that he exhaust local remedies before appealing to LUBA; and (3) the planning commission decision becomes the county’s final decision and subject to appeal to LUBA. *Burke v. Crook County*, 45 Or LUBA 516 (2003).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A party attempting to intervene in a LUBA appeal need only have appeared before the local government and file a timely motion to intervene with LUBA. Unlike petitioners before LUBA, there is no requirement that intervenors have exhausted all administrative remedies below. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The purpose of the ORS 197.825(2)(a) exhaustion requirement is to ensure that the final decision is made by the highest local decision-making body before an appeal to LUBA is pursued. That purpose is satisfied notwithstanding that

the petitioner did not file her own local appeal and did not obtain a decision from the highest local decision-making body on the merits of the permit application, where the petitioner appeared at the hearing on an appeal filed by another person before the local appeal was withdrawn and dismissed, and the effect of dismissal was to adopt an earlier tentative decision as the local government's final decision on the permit. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 597 (2002).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a land use decision is rendered without a hearing and parties belatedly learn of the decision, ORS 197.830(3) provides a right of direct appeal to LUBA except where petitioners also seek and are granted a local appeal. *Warf v. Coos County*, 42 Or LUBA 84 (2002).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** ORS 197.830(4) comprehensively addresses the situation where a local government makes a permit decision without a hearing pursuant to ORS 215.416(11) or 227.175(10). *Warf v. Coos County*, 42 Or LUBA 84 (2002).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** ORS 197.830(4) applies where a local government is attempting to render a permit decision without a prior hearing pursuant to ORS 215.416(11) or 227.175(10). ORS 197.830(3) applies in all other cases where a local government adopts a decision without providing a hearing, including where the local government mistakenly believes its decision is not a discretionary “permit” decision and for that reason does not provide the required notice and opportunity for a local appeal. *Warf v. Coos County*, 42 Or LUBA 84 (2002).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a local government cites no legal requirement that a petitioner must have (1) submitted written opposition to a proposed annexation with a request for public hearing and (2) appeared in person at the public meeting where the city council considered the written opposition and hearing request, LUBA will reject the local government's argument that both a written and personal appearance are required to exhaust local administrative remedies. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A petitioner may not challenge the merits of the underlying decision in an appeal of a local decision maker's determination that there is no local appeal available to challenge that decision. *Robinson v. City of Silverton*, 39 Or LUBA 792 (2001).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A determination that there is no further local appeal under a local government's code is a land use decision that may be challenged at LUBA. *Robinson v. City of Silverton*, 39 Or LUBA 792 (2001).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** LUBA will not dismiss an appeal for failure to exhaust local administrative remedies where the local code provisions regarding appeals are ambiguous and petitioner followed a directive in a planning commission notice of decision that appeals from its decision would be directly to LUBA. *Mountain West Investment v. City of Silverton*, 39 Or LUBA 788 (2001).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where ORS 197.830(4) applies it provides a right to appeal directly to LUBA, within certain time limits, notwithstanding that the deadline for filing a local appeal has expired. In such circumstances, there is no local appeal available to be exhausted pursuant to ORS 197.825(2)(a). *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the city council is legally obligated to review the planning commission’s legislative recommendation to adopt proposed land use regulations, petitioner is not required to perform the redundant task of appealing the planning commission’s decision to the city council. *Home Depot, Inc. v. City of Beaverton*, 37 Or LUBA 1020 (2000).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the notice of a planning commission’s legislative recommendation to the city council limited nonapplicant appeal rights to persons who appeared before the planning commission, but the city’s violation of ORS 197.610(1) obviates the appearance requirement for petitioner, a local appeal of the planning commission’s decision is not “available” to petitioner and petitioner need not exhaust such a local remedy in order to appeal the city council’s decision to LUBA. *Home Depot, Inc. v. City of Beaverton*, 37 Or LUBA 1020 (2000).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the availability of a local appeal is unclear and petitioner first seeks such a local appeal and then files a notice of intent to appeal with LUBA within 21 days after the local appeal is denied, petitioner’s appeal to LUBA is timely. *Hal’s Construction, Inc. v. Clackamas County*, 37 Or LUBA 981 (1999).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** LUBA will dismiss an appeal if the petitioner files both a local appeal and an appeal with LUBA and the county accepts the local appeal, because the county has made available to petitioner a local remedy that petitioner is required to exhaust before appealing to LUBA. *McKy v. Josephine County*, 36 Or LUBA 769 (1999).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a local government decision gives no hint that a local appeal is available and states that it is the local government’s final decision, a petitioner does not fail to exhaust administrative remedies by appealing that decision to LUBA without attempting first to appeal the decision locally. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** An argument that a party failed to file a timely appeal of a local planning department’s decision may, if correct, provide a basis for reversing the land use decision that ultimately resulted from the local appeal; but it would not provide a basis for dismissing the LUBA appeal. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the county administratively approves development under ORS 215.416(11), but fails to provide an adjacent landowner with either the notice or the opportunity for local appeal required by statute, the time to file an appeal of that

approval to LUBA is tolled until the landowner receives actual notice, pursuant to ORS 197.830(3). *Bowlin v. Grant County*, 35 Or LUBA 776 (1998).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Petitioners have no available administrative remedy to exhaust where petitioners do not receive notice of the planning director’s decision in an administrative action, and therefore did not appear at the proceeding by filing the “timely written statement” required to appeal under local ordinance. *Wilbur Residents v. Douglas County*, 33 Or LUBA 761 (1997).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A local appellant exhausts local remedies as required by ORS 197.825(2)(a) by appealing the local decision to the hearings officer, where the board of county commissioners have by standing order declined to hear certain appeals of hearings officer decisions and the notice of decision states it is the county’s final decision. *Central Oregon Cellular, Inc. v. Deschutes County*, 33 Or LUBA 345 (1997).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** An amendment to a county’s comprehensive plan does not compel an identical amendment to the zoning ordinance, and petitioners are not required to exhaust administrative remedies available to a plan amendment approval in order to appeal a subsequent zone change. *Alliance for Responsible Land Use v. Deschutes County*, 33 Or LUBA 12 (1997).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Because petitioners failed to demonstrate the county’s announcement of a higher appeal fee two hours before the deadline for filing a local appeal precluded them from exercising their local appeal rights, they failed to show they exhausted their local administrative remedies, and LUBA must dismiss. *Westall v. Polk County*, 32 Or LUBA 443 (1997).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Deficiencies alleged by petitioners in the notice of proposed action and the notice of decision do not excuse petitioners from exhausting available local remedies as required by ORS 197.825(2)(a) prior to appealing to LUBA. *Walton v. Clackamas County*, 32 Or LUBA 426 (1997).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** If there is no procedure available for the local appeal of a land use decision, it may be appealed directly to LUBA. *No Casino Association v. Lincoln City*, 30 Or LUBA 79 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A petitioner must first pursue local administrative remedies prior to review by LUBA; however, those remedies must be both available and adequate to meet an applicant’s needs. *Reeves v. City of Tualatin*, 31 Or LUBA 11 (1996).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The exhaustion requirement of ORS 197.825(2)(a) is satisfied where the petitioner has appealed a decision on his application to the highest decision maker at the local level. *Reeves v. City of Tualatin*, 31 Or LUBA 11 (1996).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** If a city hearings officer issues an amended decision and the amendments are so integrated into the decision that a page-by-page review is

required to locate them, petitioners may file a local appeal of the entire amended decision within the period allowed by local ordinance. *Wilmington Neighbors v. City of Bend*, 30 Or LUBA 415 (1996).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Requirement that LUBA must dismiss for lack of jurisdiction if a petitioner fails to exhaust all local remedies applies only when there is an available procedure which, if pursued successfully, would accomplish the petitioner’s desired result. *New v. Clackamas County*, 30 Or LUBA 453 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A local government must make clear prior to the commencement of a local appeal period that a local appeal is available or it cannot contend that a petitioner who fails to appeal locally has not exhausted all local remedies. *New v. Clackamas County*, 30 Or LUBA 453 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** When county ordinance is unclear and county decision maker’s remarks were self-contradictory and confusing as to whether a local appeal was available, a local appeal was not an available local remedy that petitioner was required to exhaust prior to appealing to LUBA. *New v. Clackamas County*, 30 Or LUBA 453 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The local appeal from an administrative decision provided by ORS 227.175(10) must be exhausted prior to an appeal to LUBA, which otherwise lacks jurisdiction under ORS 197.825(2)(a). *Caraher v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Since a local appeal is not available from an ORS 197.825 administrative decision made without authority, a petitioner may appeal the decision directly to LUBA. *Caraher v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The purpose of ORS 197.825(2)(a) is to assure a local government decision is reviewed by the highest-level local decision-making body that the local code makes available, and a party’s failure to exercise a right to a local appeal is grounds for dismissal of that party’s appeal to LUBA. *Shaffer v. City of Salem*, 29 Or LUBA 479 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a local appeal is available, the purpose of the exhaustion requirement of ORS 197.825(2)(a) is to assure that the local government decision is reviewed by the highest level local decision making body the local code makes available, before an appeal to LUBA is pursued. *Tarjoto v. Lane County*, 29 Or LUBA 408 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** If a local government fails to provide the notice of a permit decision made without a hearing required by ORS 215.416(11) or 227.175(10), the time for filing a local appeal does not begin to run until an appellant is provided the notice of decision to which he or she is entitled. Because a local appeal is available to such an individual, under ORS 197.825(2)(a) that local appeal must be exhausted before appealing to LUBA. *Tarjoto v. Lane County*, 29 Or LUBA 408 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Although ORS 197.825(2)(a) requires that local appeals be exhausted, the fact that the local code may limit the scope of review of a local appellate body in considering a local appeal does not similarly limit LUBA’s scope of review. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the local code provides petitioner has a right to initiate a minor comprehensive plan amendment, but only the local government can initiate a major plan amendment, and that the local government may refuse to do so for any reason, the process for local government-initiated plan amendments is not an administrative remedy petitioner is required to exhaust before seeking LUBA review of a local government decision that petitioner’s proposed plan amendment is a major plan amendment. *Cone v. City of Eugene*, 29 Or LUBA 133 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where ORS 197.830(3) applies, it provides a petitioner with a right to appeal directly to LUBA, within the time limits established by ORS 197.830(3)(a) and (b), notwithstanding that the deadline for filing a local appeal may have expired. In such circumstances, there is no local appeal available to be exhausted pursuant to ORS 197.825(2)(a). *Beveled Edge Machines, Inc. v. City of Dallas*, 28 Or LUBA 790 (1995).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A right to request rehearing or reconsideration by the highest local decision maker is not an “appeal” that a petitioner is obligated to exhaust before appealing to LUBA, pursuant to ORS 197.825(2)(a). *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where petitioners were the prevailing parties after the initial local decision on an application, a local appeal of that initial decision was filed by another party, and petitioners participated in the local appeal proceedings, petitioners did not fail to exhaust available local administrative remedies, as required by ORS 197.825(2)(a). *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** 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).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** If petitioner appeared in the local proceedings, and became entitled to notice of the local government’s decision under ORS 227.173(3) or 215.416(10), petitioner cannot appeal that decision directly to LUBA under ORS 197.830(3), but rather must first exhaust any available local administrative remedies, as required by ORS 197.825(2)(a). *Ramsey v. City of Portland*, 28 Or LUBA 763 (1994).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a petitioner seeks to avoid civil penalties by obtaining permit approval for mobile homes located on his property rather than by pursuing an available local appeal of the civil penalties, petitioner may not challenge the civil

penalties at LUBA in an appeal of the local government's denial of the requested permits. *Jones v. Lane County*, 28 Or LUBA 193 (1994).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the challenged decision is made by the highest level local decision maker possible and petitioner appeared before that decision maker, the exhaustion requirement of ORS 197.825(2)(a) is met. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** A chief planner's letter rejecting an attempt to file a local appeal of an earlier document explaining how land use regulation provisions are interpreted and applied is a land use decision, if the letter applies land use regulation provisions governing local appeals in concluding that no appeal is available, and there is no further appeal of the chief planner's letter available which must be exhausted. ORS 197.015(10)(a)(A)(iii). *Forest Park Neigh. Assoc. v. City of Portland*, 26 Or LUBA 636 (1994).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where petitioner was the prevailing party after the initial local decision on an application, a local appeal of that initial decision was filed by another party to the proceeding, and petitioner participated in the local appeal proceedings, petitioner did not fail to exhaust his local administrative remedies simply because he did not file the local appeal. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a motion to dismiss is filed on the basis that petitioners failed to exhaust local remedies, but an appeal of a local government decision not to accept petitioners' local appeal of the decision challenged at LUBA is pending below, LUBA cannot determine whether petitioners failed to exhaust local remedies, and will suspend consideration of the motion to dismiss until the local government makes a final decision on whether to accept petitioners' local appeal. *Hart v. Jefferson County*, 25 Or LUBA 773 (1993).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where parties object that petitioner failed to properly perfect its local appeal, but the local government nevertheless allows the local appeal, petitioner satisfies the requirement that it exhaust available administrative remedies, as ORS 197.825(2)(a) requires. Although the local government may have committed reversible error in considering the local appeal, LUBA has jurisdiction to review the local government's final decision. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** That petitioner may be precluded from raising the issues it seeks to raise in a LUBA appeal because those issues were required to have been raised and resolved in an earlier stage of the local land use proceeding, which petitioner did not appeal, would not mean that LUBA would lack jurisdiction to review the challenged decision. Rather, in such circumstances, LUBA would be required to affirm the decision. *DLCD v. Crook County*, 24 Or LUBA 393 (1993).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The requirement of ORS 197.825(2)(a) for exhaustion of administrative remedies is satisfied so long as one petitioner exhausts all available administrative remedies before a land use decision is appealed to LUBA. *Glisan Street Assoc. v. City of Portland*, 24 Or LUBA 600 (1992).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The requirement of ORS 197.825(2)(a) that petitioners exhaust administrative remedies before appealing to LUBA is satisfied if at least one petitioner exhausted all available administrative remedies. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The ORS 197.825(2)(a) requirement that administrative remedies be exhausted before appealing a land use decision to LUBA is satisfied if at least one petitioner exhausts all available administrative remedies. *Goose Hollow Foothills League v. City of Portland*, 24 Or LUBA 69 (1992).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** That a local government is required to provide particular individuals with written notice of a land use decision has no bearing on the requirement that available local administrative remedies be exhausted before appealing to LUBA. *Pautler v. City of Lake Oswego*, 23 Or LUBA 339 (1992).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** The purpose of the exhaustion requirement is to assure that the challenged decision is reviewed by the highest level local decision making body the code makes available, before an appeal to LUBA is pursued. Where petitioners did not initiate the local appeal, but did appear before the governing body, the exhaustion requirement of ORS 197.825(2)(a) is satisfied. *Moody v. Deschutes County*, 22 Or LUBA 567 (1992).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where the local code provides an unqualified right to a local appeal, petitioners must exhaust that local administrative remedy before appealing to LUBA. *Kamppi v. City of Salem*, 21 Or LUBA 498 (1991).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Petitioners are not excused from filing a local appeal on the basis that local government employees asserted that no local appeal of the challenged decision is available. *Kamppi v. City of Salem*, 21 Or LUBA 498 (1991).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a local code requires a determination of compliance with applicable ordinance requirements at the time of subdivision outline plan approval and that the final plat be approved if it is “in substantial conformance with the outline plan,” a petitioner may not fail to appeal the decision granting outline plan approval and thereafter, in an appeal of the final plan approval, challenge the subdivision’s compliance with plan and code provisions found to be satisfied at the time of outline plan approval. *Sandler v. City of Ashland*, 21 Or LUBA 483 (1991).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** LUBA will not dismiss an appeal for failure to exhaust administrative remedies below, where the available administrative remedies required that a person first appear and the local government rendered the challenged decision without providing a public hearing at which petitioner could have appeared. *Rebmann v. Linn County*, 21 Or LUBA 542 (1991).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where a local code gives “aggrieved parties” the right to appeal a decision, but does not require notice and a hearing prior to making

that decision, petitioners were not given an opportunity to become “aggrieved parties” and therefore had no local remedies to exhaust. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

**26.5 LUBA Jurisdiction – Exhaustion of Remedies.** Where petitioners appeal a letter from the county court’s counsel, stating the county court (1) has decided not to conduct any further review of petitioners’ local appeal of a planning commission decision, and (2) considers the planning commission decision to be final, that letter constitutes the county’s final decision on petitioners’ local appeal, and petitioners have not failed to exhaust their administrative remedies. That the county court’s decision not to conduct any further review of petitioners’ appeal may have been erroneous does not affect LUBA’s jurisdiction. *Komning v. Grant County*, 20 Or LUBA 481 (1990).