

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

For the purposes of OAR 661-010-0015(1)(a), a timely filed notice of intent to appeal is sufficient to establish LUBA’s jurisdiction despite failing to comply with one or more of the requirements for the content of notice under OAR 661-010-0015(3). *O’Rourke v. Union County*, 54 Or LUBA 758 (2007).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Partial noncompliance with the content requirements of an otherwise timely filed notice of intent to appeal is a technical violation of LUBA’s rules that is not jurisdictional and is not a basis to dismiss the appeal, unless shown to prejudice other parties’ substantial rights. *O’Rourke v. Union County*, 54 Or LUBA 758 (2007).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Technical violation of LUBA’s rules pertaining to the content of a notice of intent to appeal does not require dismissal unless it prejudices the substantial rights of the parties. A party’s substantial rights have not been prejudiced where the party was timely served with the original yet technically flawed notice of intent to appeal but was untimely served with the amended notice of intent to appeal. *O’Rourke v. Union County*, 54 Or LUBA 758 (2007).

**27.2.2 LUBA Procedures/Rules - Perfecting an Appeal - Notice of Intent to Appeal.**

Petitioners’ arguments on the merits of an appeal that are included in their notice of intent to appeal are presented prematurely. Petitioners’ arguments on the merits of an appeal are properly presented in their petition for review, after petitioners’ record objections are resolved and after LUBA settles the record. *Robson v. City of La Grande*, 53 Or LUBA 604 (2006).

**27.2.2 LUBA Procedures/Rules - Perfecting an Appeal - Notice of Intent to Appeal.**

While it is possible that LUBA might grant a petitioner’s request that a notice of intent to appeal be treated as the petition for review, a petitioner may not wait until over two weeks after the deadline for filing the petition for review has expired to make such a request. *Bleu v. Clackamas County*, 52 Or LUBA 606 (2006).

**27.2.2 LUBA Procedures/Rules - Perfecting an Appeal - Notice of Intent to Appeal.**

Where an individual files a written appearance on behalf of an organization before a local government opposing a permit application, it is the organization that must advise LUBA that the individual was not authorized to make the written appearance on behalf of the organization. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

The requirements in OAR 661-010-0015(3) that the notice of intent to appeal include a caption identifying the “governing body” as the respondent and that the notice include the name and telephone number of the governing body and its counsel serve important purposes, including notifying the local government responsible for compiling the record and defending the decision before LUBA that its decision has been appealed, but those

requirements are not in themselves jurisdictional. *Stoloff v. City of Portland*, 51 Or LUBA 812 (2006).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where pursuant to an intergovernmental agreement a city acts as the final decision maker for a county, compiles the record, and defends the decision before LUBA, the purposes of OAR 661-010-0015(3) are better served by naming the city rather than the county as the respondent. *Stoloff v. City of Portland*, 51 Or LUBA 812 (2006).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Failure to satisfy the content requirements for a notice of an intent to appeal is a technical violation of LUBA’s rules that does not provide a basis to dismiss the appeal, absent a showing of prejudice to the parties’ substantial rights. Where no prejudice is shown, LUBA will allow the notice to be amended to name the correct parties. *Stoloff v. City of Portland*, 51 Or LUBA 812 (2006).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

A notice of intent to appeal that is placed in an envelope that is addressed to and mailed certified mail to an address that is not LUBA’s is not “filed” with LUBA for purposes of OAR 661-010-0015(1)(b), and therefore cannot be relied upon for the date of filing. *Ford v. Jackson County*, 50 Or LUBA 359 (2005).

**27.2.2 LUBA Procedures/Rules - Perfecting an Appeal - Notice of Intent to Appeal.**

Where a petitioner notices construction activity on property, promptly investigates, discovers a building permit posted on the property, obtains a copy of the building permit and files an appeal with LUBA 14 days after first discovering the building permit posted on the property, the appeal is timely filed under 197.830(3)(b). *Jebousek v. City of Newport*, 50 Or LUBA 724 (2005).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

While *service* of the notice to intent to appeal is jurisdictional under ORS 197.830(9), the *timing* of that service is not. *Friends of the Metolius v. Jefferson County*, 50 Or LUBA 735 (2005).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

The statutes governing review of land use decisions are *sui generis*, and caution is appropriate in extrapolating to or from other statutory contexts and the statutes and rules governing LUBA’s review. That the Oregon Supreme Court has interpreted statutes and rules governing civil appeals to require that timely service of a notice of appeal is jurisdictional does not lead to the conclusion that LUBA’s rules, which do not make timely service jurisdictional, are inconsistent with the statutes governing LUBA’s review. *Friends of the Metolius v. Jefferson County*, 50 Or LUBA 735 (2005).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

LUBA’s rules require the petitioner to timely serve a copy of the notice of intent to appeal on the respondent, and to certify such service, but do not assign jurisdictional

consequences to whether the respondent actually receives the notice. *Friends of the Metolius v. Jefferson County*, 50 Or LUBA 735 (2005).

**27.2.2 LUBA Procedures/Rules - Perfecting an Appeal - Notice of Intent to Appeal.**

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).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where petitioner mails a notice of intent to appeal on the 21<sup>st</sup> day after the local decision becomes final by first-class mail with a “certificate of mailing” rather than by certified or registered mail, as provided in OAR 661-010-0015(1), the notice of intent to appeal is “filed” on the date it is received by LUBA, not on the date of mailing. Where LUBA receives such a notice of intent to appeal more than 21 days after the local decision becomes final, the appeal must be dismissed. *McKnight v. City of Portland*, 48 Or LUBA 292 (2004).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Even assuming that a county decision in response to a periodic review work task includes matters within LUBA’s scope of review, LUBA has no jurisdiction to review the county decision where petitioners fail to appeal the county decision to LUBA within the time specified in ORS 197.830(9). *Colony v. Wallowa County*, 46 Or LUBA 586 (2004).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

An error in the name of the petitioner is a technical violation of LUBA’s rules and may be cured by substituting the name of the real petitioner. *Concerned Citizens v. Malheur County*, 46 Or LUBA 827 (2004).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

When a notice of intent to appeal mistakenly identifies the wrong decision as the subject of the appeal, and that mistake is due to a local government’s procedural error with regard to the petitioner, LUBA will treat the petitioner’s mistake as a technical pleading error, read the notice to appeal the correct decision, and not dismiss an otherwise properly filed appeal. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Local proceedings on remand from LUBA are not “decisions made without a hearing” within the meaning of ORS 197.830(3) and, therefore, in order to file a notice of intent to appeal that remand decision with LUBA, the notice of intent to appeal must be filed in accordance with ORS 197.830(9). *Friends of Jacksonville v. City of Jacksonville*, 44 Or LUBA 379 (2003).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.** A city’s erroneous statement in its notice of decision that the LUBA appeal deadline fell on a particular date does not have the legal effect of extending the appeal deadline. *Friends of Jacksonville v. City of Jacksonville*, 44 Or LUBA 379 (2003).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.** Under LUBA’s rules, an organization must be represented by an attorney. Where an unrepresented organization is a named petitioner in an appeal to LUBA, but fails to obtain counsel within the time set by the Board, that party will be dismissed from the appeal. *Ziemer v. City of Florence*, 43 OR LUBA 1 (2002).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.** A notice of intent to appeal filed within 21 days after the date an earlier tentative decision was made final by a second decision is timely filed under ORS 197.830(9). *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 597 (2002).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.** Under ORS 197.830(3)(b), where a petitioner does not have knowledge of a land use decision but observes activity or otherwise obtains information reasonably suggesting that a land use decision has been rendered, that petitioner is placed on notice to make inquiries regarding the nature of the land use decision. The 21-day appeal deadline begins to run on the date that timely inquiries are made and the decision is discovered or, in the absence of timely inquiries, on the date the petitioner is placed on inquiry notice. *Rogers v. City of Eagle Point*, 42 Or LUBA 607.

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.** Evidence in the record that petitioners knew an application for a proposed subdivision was pending before the local government is not sufficient to establish, for purposes of ORS 197.830(3), that petitioners knew or should have known that the subdivision application would be approved or that the application included a proposal to develop a lot within *petitioners’* subdivision as an access street for the proposed subdivision. *Rogers v. City of Eagle Point*, 42 Or LUBA 607.

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.** In accordance with OAR 661-010-0075(6), LUBA will dismiss an appeal where a corporation’s notice of intent to appeal was filed by a person who is not an attorney, and an amended notice of intent to appeal signed by an attorney was not filed within the deadline set by the Board. *Qwest Wireless, L.L.C. v. City of Medford*, 42 Or LUBA 174.

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.** A notice of intent to appeal that is filed by first class mail 21 days after the appealed decision became final is not timely filed under ORS 197.830(9) and OAR 661-010-0015(1), where the notice of intent to appeal is not actually received by LUBA until 22 days after the appealed decision became final. *Larner v. City of Portland*, 41 Or LUBA 471 (2002).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.** LUBA will not dismiss an appeal of a letter that provided notice of an earlier land use decision, provided the notice of intent to appeal adequately identifies the land use

decision being appealed, and the notice of intent to appeal is filed within the period allowed by statute for appeal of the land use decision. *Kent v. City of Portland*, 39 Or LUBA 455 (2001).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where the notice of intent to appeal challenges a governing body’s decision determining that petitioner has no standing to file a local appeal of a planning director’s decision, but the petition for review assigns error only to the planning director’s decision, the petition for review provides no basis to reverse or remand the governing body’s decision. *Doob v. Josephine County*, 39 Or LUBA 301 (2001).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Failure to serve a copy of the notice of intent to appeal on the applicant’s attorney in a timely manner is a technical violation of LUBA’s rules that does not require dismissal unless the substantial rights of the applicant have been prejudiced. *Mountain West Investment v. City of Silverton*, 38 Or LUBA 932 (2000).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Under ORS 197.830(8), the time for appealing an amendment to an acknowledged plan or land use regulation is measured from the time the decision was mailed in accordance with ORS 197.615 and OAR 660-018-0040. Where a party files a notice of intent to appeal within 21 days of the date the decision was mailed in accordance with the statute and rule, the notice of intent to appeal is timely filed. *Craig Realty Group v. City of Woodburn*, 37 Or LUBA 1041 (2000).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

ORS 197.615(1) and OAR 660-018-0040 require that a local government send a copy of an ordinance amending local land use regulations and the findings supporting the ordinance, “accompanied by appropriate forms provided by” DLCDD. Failure to submit the appropriate form with the decision and findings tolls the time to file a notice of intent to appeal with LUBA until 21 days after the proper notice is given. *Craig Realty Group v. City of Woodburn*, 37 Or LUBA 1041 (2000).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

A planning director’s letter determining that a driving range is a permitted use is the decision that triggers the 21-day appeal timeline to LUBA, not the date the developer began construction. *Davis v. City of Ashland*, 37 Or LUBA 224 (1999).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

A notice of intent to appeal is timely filed where the county code specifies that land use decisions become final when mailed to the parties entitled to notice, and petitioner filed the notice of intent to appeal within 21 days of the date the county mailed the decision. *Warrick v. Josephine County*, 36 Or LUBA 796 (1999).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

The failure to serve all persons required to be named in the notice of intent to appeal as required by OAR 661-010-0015 is a technical violation of LUBA’s rules, when intervenor’s only alleged prejudice is that the violation prohibits other parties from contributing resources to support his position. A person need not have intervenor status to contribute to the preparation of a brief, financially or otherwise. *Multi/Tech Engineering v. Josephine County*, 36 Or LUBA 774 (1999).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

LUBA will not accept an amended notice of intent to appeal that identifies a different

decision than that which is the subject of the original notice of intent to appeal, unless the amended notice is accompanied by the fee and deposit required by OAR 661-010-0015(4). Where LUBA accepts such an amended notice, LUBA will not dismiss the amended notice until petitioner has had an opportunity to submit the required fee and deposit. *McKy v. Josephine County*, 36 Or LUBA 769 (1999).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Whether petitioner had "actual notice" of the decision under ORS 197.830(3)(a) depends on whether petitioner has received written notice of the decision. That petitioner knew or should have known of the challenged decision more than 21 days before filing the notice of intent to appeal is a dispositive consideration under ORS 197.830(3)(b), but not under ORS 197.830(3)(a). *Bowlin v. Grant County*, 35 Or LUBA 776 (1998).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

An evidentiary hearing is not warranted to establish that the county orally advised petitioner that the county had approved the challenged application more than 21 days before petitioner filed the notice of intent to appeal, when the relevant issue under ORS 197.830(3)(a) is when the petitioner received actual written notice of the decision. *Bowlin v. Grant County*, 35 Or LUBA 776 (1998).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

For purposes of starting the ORS 197.830(3)(b) appeal period for appealing a county decision rendered without a hearing, petitioner "knew or should have known" of a decision approving a grading permit authorizing a retaining wall where petitioner knew that the applicant was building a retaining wall and placing fill behind it and that the county had approved a grading permit for the subdivision authorizing 76,000 cubic feet of fill. *Abadi v. Washington County*, 35 Or LUBA 67 (1998).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Whether multiple enactments constitute a single decision for purposes of appeal to LUBA depends on the relationship between the enactments. Where a decision on reconsideration reenacts the original decision together with a supplemental enactment that is characterized as an "integral part" of the reconsidered decision, there is a single decision for purposes of appeal of the decision on reconsideration to LUBA. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

The parties to an appeal at LUBA may not by agreement stipulate that LUBA has jurisdiction to review a separate decision that was not appealed to LUBA. *Mountain Gate Homeowners v. Washington County*, 34 Or LUBA 169 (1998).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

An appeal will be dismissed where petitioner failed to "appear" below and therefore lacks standing to appeal to LUBA. In that circumstance, the LUBA appeal will be dismissed notwithstanding the intervention as a petitioner of a party who did appear below, where

that intervenor-petitioner did not also file his own timely notice of intent to appeal. *Waters v. Marion County*, 33 Or LUBA 751 (1997).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

The timely filing of a technically flawed notice of intent to appeal satisfies LUBA's jurisdictional requirements; and properly serving an amended notice of intent to appeal that corrects the technical violations in the original notice, although not expressly allowed by LUBA's rules, may avoid dismissal on the ground of prejudice to the substantial rights of the county. *Markham v. Coos County*, 31 Or LUBA 529 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

LUBA will not grant the county's motion to dismiss based on petitioners' failure to timely serve a notice of intent to appeal on interested parties, when those parties have not moved for dismissal. *Markham v. Coos County*, 31 Or LUBA 529 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Numerous technical violations of LUBA's rules pertaining to the form and content of a notice of intent to appeal do not require dismissal unless they prejudice the substantial rights of the parties. The inconvenience to the county in having to search its records to identify the subject of the appeal does not amount to prejudice of the county's substantial rights. *Markham v. Coos County*, 31 Or LUBA 529 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Because of flooding during the week of February 5, 1996, which created de facto "holidays" at various state offices, a notice of intent to appeal delivered to LUBA on the first business day after the flooding will be considered timely under ORS 197.830(8) and OAR 661-10-015(1). *Younger v. Jackson County*, 31 Or LUBA 521 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

The timely filing of a notice of intent to appeal a local decision is jurisdictional, and an untimely filed notice of intent to appeal mandates dismissal of the appeal. *Winner v. Multnomah County*, 30 Or LUBA 420 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

While timely filing of a notice of intent to appeal is jurisdictional, violations of the requirements for the content and service of a notice of intent to appeal are technical, and warrant dismissal of the appeal only if another party is prejudiced by the violations. *Winner v. Multnomah County*, 30 Or LUBA 420 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a document submitted as a notice of intent to appeal wholly fails to satisfy the requirements of OAR 661-10-015(1), to the point where LUBA cannot process the appeal and other parties cannot effectively participate, the document does not constitute a notice of intent to appeal. *Winner v. Multnomah County*, 30 Or LUBA 420 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

If a petitioner's failure to comply with the OAR 661-10-015(3) requirements for the content of the notice of intent to appeal precludes other parties from effectively participating in the appeal, the other parties are per se prejudiced by the violations. *Winner v. Multnomah County*, 30 Or LUBA 420 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a notice of intent to appeal identifies more than one decision as the subject of the appeal, LUBA will not dismiss the appeal, but rather will require petitioners to submit the appropriate additional filing fees and deposits for costs for each additional decision identified in the notice of intent to appeal, and will treat the proceeding as a consolidated appeal. *McKenzie v. Multnomah County*, 30 Or LUBA 459 (1996).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Until the requirements of ORS 197.615(2)(b) are satisfied, the time for filing a notice of intent to appeal a comprehensive plan amendment does not begin to run. When a final decision has been made, but petitioners have not received the notice to which they are entitled under ORS 197.615(2)(b), their notice of intent to appeal is timely filed. *Barton v. City of Lincoln City*, 29 Or LUBA 612 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

When a challenged decision is an amendment to an acknowledged comprehensive plan processed under ORS 197.615, the date of mailing, not the date of the final decision, establishes the deadline for filing the notice of intent to appeal under ORS 197.830(8). *Barton v. City of Lincoln City*, 29 Or LUBA 612 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a local government's notice of decision is not accompanied by a certificate of mailing or service, and the date of mailing is critical to determining whether the notice of intent to appeal was timely filed, LUBA will rely on other evidence, including affidavits, to decide when the notice of decision was mailed. *1000 Friends of Oregon v. Columbia County*, 29 Or LUBA 597 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

ORS 12.140, a 10-year statute of limitations for initiating civil actions in Oregon courts, does not apply to LUBA's proceedings. *Nehoda v. Coos County*, 29 Or LUBA 251 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

ORS 197.830(3) applies only where a local government makes a *land use decision* without providing a hearing, and petitioners subsequently attempt to challenge that decision in an appeal to LUBA. Where a local government did not previously make a land use decision concerning the legality of an existing use, petitioner's timely appeal of the local government's new land use decision is not precluded under ORS 197.830(3)(b), because petitioners allegedly knew of the use's existence for several years. *Penland v. Josephine County*, 29 Or LUBA 213 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where determining whether a notice of intent to appeal was timely filed under ORS 197.830(3) depends on determining which code notice of hearing provision applied to the local proceeding, and LUBA can infer from the challenged decision which notice provision the local governing body believes governs the local proceeding and agrees with that interpretation, even without the deference required by *Clark*, LUBA is not required to remand the decision for the governing body to make its interpretation explicit. *Orenco Neighborhood v. City of Hillsboro*, 29 Or LUBA 186 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Failure to serve the notice of intent to appeal on a respondent within the time required by OAR 661-10-015(2) is a technical violation of LUBA's rules, which is not grounds for dismissal unless the substantial rights of parties are prejudiced. Where the notice of intent to appeal was served on respondent, at most, two days later than required by OAR 661-10-015(2), respondent's substantial rights were not prejudiced. *Williams v. City of Philomath*, 29 Or LUBA 563 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a local government approved a conditional use permit for a nonforest dwelling in 1992, and petitioner's notice of intent to appeal simply identifies the local government's 1994 building permit approval as the appealed decision, petitioner's appeal has the legal effect of appealing only the 1994 building permit decision. *Broderson v. Jackson County*, 28 Or LUBA 645 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where petitioner was entitled to notice of the hearing on a development proposal and was not given such notice, but was not entitled to notice of the local decision, under ORS 197.830(3)(b), petitioner's notice of intent to appeal the local decision to LUBA is timely so long as it is filed within 21 days after petitioner "knew or should have known" of the local decision. *Beveled Edge Machines, Inc. v. City of Dallas*, 28 Or LUBA 790 (1995).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

It is petitioner's obligation to establish LUBA's jurisdiction, including that petitioner's notice of intent to appeal was timely filed. *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

The failure of a notice of intent to appeal to include "[t]he full title of the decision to be reviewed as it appears on the final decision," as required by OAR 661-10-015(3)(c), provides no basis for summarily affirming the challenged decision where respondent understood which decision was being challenged and submitted the local record supporting the challenged decision. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

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).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a local hearing is provided, and petitioner appears at that hearing and becomes entitled to notice of the challenged land use decision under ORS 215.416(10) or 227.173(3), the filing of petitioner's notice of intent to appeal is governed by ORS 197.830(2) and (8), *not* ORS 197.830(3). *Ramsey v. City of Portland*, 28 Or LUBA 763 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where petitioner appeals local government decisions issuing a building permit and denying a request for a local appeal of the building permit, and petitioner's notice of intent to appeal is filed more than 21 days after petitioner had actual notice of the building permit decision but within 21 days of the decision that there is no right to a local appeal, the notice of intent to appeal is untimely filed with regard to the building permit decision and the only issue to be resolved in the LUBA appeal is whether the local government determination that there is no right to a local appeal of the building permit decision is erroneous. *Mills v. City of Yachats*, 28 Or LUBA 736 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a notice of intent to appeal filed at LUBA is later withdrawn, the LUBA appeal must be dismissed. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a notice of intent to appeal states the challenged decision is a planning commission recommendation to the governing body, the local government moves to dismiss the appeal on the ground the challenged decision is not final, and petitioner fails to respond to the motion to dismiss, the appeal will be dismissed. *Braun v. City of La Grande*, 27 Or LUBA 581 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where petitioner files a notice of intent to appeal within 21 days after the decision maker's oral vote to adopt the challenged decision, but before the final written decision was adopted, the notice of intent to appeal is timely filed under OAR 661-10-015(1), and petitioner will be permitted to amend the notice of intent to appeal to identify the correct date the challenged decision became final. *Sanchez v. Clatsop County*, 27 Or LUBA 713 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where the identity of the decision petitioner seeks to appeal was, or should have been, understood by respondent, and the notice of intent to appeal was timely filed under OAR 661-10-015(1), that petitioner identified respondent's tentative oral decision in the notice of intent to appeal rather than the final written decision is, at most, a technical

violation of LUBA's rules and provides no basis for dismissing the appeal. *Fraser v. City of Joseph*, 27 Or LUBA 695 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Allegations in a notice of intent to appeal that the challenged decision is a land use decision do not constitute a judicial admission that the challenged decision is a land use decision. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where petitioner's notice of intent to appeal identifies the challenged decision as the governing body's decision to dismiss his local appeal, but his petition for review alleges error in the planning commission's decision to approve the subject application, rather than the governing body's decision dismissing his appeal, LUBA will affirm the challenged decision. *Churchill v. Tillamook County*, 26 Or LUBA 22 (1993).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

The appeal deadline provisions of ORS 197.830(3) requiring that a notice of intent to appeal be filed within 21 days after petitioner "knew or should have known or had actual notice of the decision" apply only where the local government fails to provide a hearing. *DLCD v. Crook County*, 25 Or LUBA 826 (1993).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where, under ORS 197.830(8) and OAR 661-10-015(1), a notice of intent to appeal is due on a legal holiday, the notice of intent to appeal is timely filed if it is filed on the next business day. ORS 187.010(3); OAR 661-10-075(7). *Garrigus v. City of Lincoln City*, 25 Or LUBA 767 (1993).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

After a local government withdraws an appealed decision pursuant to ORS 197.830(12)(b) and files a decision on reconsideration with LUBA, if no amended notice of intent to appeal is filed or original notice of intent to appeal is refiled within 21 days after the decision on reconsideration, then the appeal will be dismissed. *Gregg v. City of Lake Oswego*, 23 Or LUBA 564 (1992).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

A notice of intent to appeal identifying one land use decision may not later be amended to include a second decision, where no notice of intent to appeal the second decision was filed within the time required by statute and no filing fee or deposit for costs has been paid to challenge the second decision. *Hood River Sand v. City of Mosier*, 23 Or LUBA 701 (1992).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

That a notice of intent to appeal (1) fails to include the date the local decision became final, (2) fails to include petitioner's address and telephone number, and (3) incorrectly identifies the city attorney, constitutes a technical violation of LUBA's rules. However,

unless technical violations of LUBA's rules affect the substantial rights of a party, they provide no basis for dismissal. *Davenport v. City of Tigard*, 23 Or LUBA 679 (1992).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Under ORS 197.830(8) and 197.615, a notice of intent to appeal a post-acknowledgment plan amendment must be filed at LUBA within 21 days of the date parties who requested notice of the post-acknowledgment plan amendment decision under ORS 199.615(2)(a)(B), were mailed such notice. *Crew v. Deschutes County*, 23 Or LUBA 148 (1992).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a notice of intent to appeal is filed with LUBA more than 21 days after the date the challenged decision became final, under OAR 661-10-015(1) LUBA must dismiss the appeal. *Crew v. Deschutes County*, 23 Or LUBA 148 (1992).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where LUBA receives a check in the amount of the filing fee and deposit for costs required by OAR 661-10-015(4), accompanied by a letter stating petitioner's notice of intent to appeal was mailed separately, and receives the notice of intent to appeal the following day, the date the notice of intent to appeal was received is the date it was "filed." *Pilling v. Crook County*, 23 Or LUBA 51 (1992).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Under OAR 661-10-015(1), so long as a notice of intent to appeal is filed before the expiration of the 21st day after the decision becomes final, the notice of intent to appeal is timely filed. *Rabe v. City of Tualatin*, 22 Or LUBA 832 (1992).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Under ORS 197.830(1), the maintenance of a validly filed notice of intent to appeal is required for LUBA to have jurisdiction over an appeal. *Ramsey v. City of Portland*, 22 Or LUBA 535 (1992).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where an organizational petitioner timely files a notice of intent to determine in its representational capacity, it is only necessary to determine whether petitioner also filed the notice of intent to appeal within 21 days of the date it, as an *organization*, is deemed to have actual notice of the challenged decision, if there were a dispute concerning the member's standing upon whom petitioner's representational capacity to bring the appeals and its representational standing depend. *Tuality Lands Coalition v. Washington County*, 21 Or LUBA 611 (1991).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a notice of intent to appeal identifies more than one decision as the subject of the appeal, LUBA will not dismiss the appeal, but rather will require the petitioners to file an additional filing fee and deposit for costs for each additional decision identified in the

notice of intent to appeal, and will treat the proceeding as a consolidated appeal. *Union Gospel Ministries v. City of Portland*, 21 Or LUBA 557 (1991).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Technical defects in a notice of intent to appeal provide no basis for dismissing an appeal, where such defects cause no prejudice to any party's substantial rights. *Tice v. Josephine County*, 21 Or LUBA 550 (1991).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

If the petitioner's notice of intent to appeal is withdrawn, LUBA must dismiss the appeal. *National Advertising Company v. City of Portland*, 20 Or LUBA 79 (1990).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Where a petitioner and respondent have settled the disagreement concerning a land use decision which led to the petitioner's filing of a notice of intent to appeal, it is consistent with the policies of ORS 197.805 favoring timely resolution of land use matters and consistency with sound principles governing judicial review to allow the petitioner to withdraw its notice of intent to appeal. *National Advertising Company v. City of Portland*, 20 Or LUBA 79 (1990).

**27.2.2 LUBA Procedures/Rules – Perfecting an Appeal – Notice of Intent to Appeal.**

Unlike other documents, which are considered filed when mailed to LUBA, a notice of intent to appeal is filed when delivered to or received by LUBA. OAR 661-10-075(2). *Oak Lodge Water District v. Clackamas County*, 18 Or LUBA 643 (1990).