

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A city errs when it accepts an appeal of a decision to deny a permit, holds an appeal hearing, and fails to issue a written decision on the appeal. ORS 227.173(3) requires the city to issue a written decision. *Smith v. City of Gearhart*, 71 Or LUBA 184 (2015).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local government has rendered a permit decision without recognizing that its decision was a permit decision and without providing notice of that decision as required by ORS 215.416(11), ORS 197.830(3)(a) applies, and the “actual notice” that the statute requires is provided only when the local government provides the written notice of the decision that is required by law or a copy of the decision itself. *Keith v. Washington County*, 66 Or LUBA 80 (2012).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The deadline to appeal a post-acknowledgment plan amendment to LUBA is 21 days from the date notice is mailed to parties entitled to notice under ORS 197.615. A party entitled to notice under ORS 197.615(4) who receives that notice must appeal within 21 days of the date notice is mailed, and that deadline is not tolled simply because the local government failed to submit a copy of the decision to DLCD as required by ORS 197.615(1). *Hatley v. Umatilla County*, 66 Or LUBA 265 (2012).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A petitioner receives “actual notice” of a decision for purposes of ORS 197.830(3)(a) on the date the local government mails a letter to petitioner informing petitioner of the decision, not on the date that the petitioner obtains a copy of the decision from the local government’s files. *Broderson v. City of Ashland*, 66 Or LUBA 369 (2012).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. LUBA will deny a motion to take evidence to consider e-mails between the petitioner and the local government to establish that the local government was aware following the proceedings below that it had failed to provide timely notice of hearing and notice of the decision to DLCD, where there is no factual dispute that the local government did not provide the notice of hearing or that the local government failed to provide timely notice of the decision, only a legal dispute as to whether such notices were required and if so the consequences of failure to provide them. *Conte v. City of Eugene*, 65 Or LUBA 326 (2012).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. LUBA will accept a reply brief that responds to a local government’s argument that the petition for review failed to assign error to the local government’s failure to provide DLCD with post-adoption notice of the decision as required by ORS 197.610(1). However, to the extent the reply brief includes arguments that purport to advance a new assignment of error or new basis for reversal or remand, LUBA will not consider such arguments. *Conte v. City of Eugene*, 65 Or LUBA 326 (2012).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where one petitioner was an adjoining property owner and entitled to written notice of a permit decision under ORS 215.416, but was not provided the required notice, the deadline for filing an appeal of a decision approving the permit is within 21 days of “actual notice” of the decision, pursuant to ORS 197.830(3)(a). For other petitioners who were not entitled to notice of the decision, the deadline for filing the appeal is within 21 days of the date the petitioners “knew or should have known” of the decision, pursuant to ORS 197.830(3)(b). *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Because ORS 197.830(3)(a) applies in circumstances where written notice of the decision is required, but not provided, “actual notice” of the decision corresponds to (1) actual written notice of the decision or (2) a copy of the decision, or similar method of notice that is equally authoritative and informative as the written notice of the decision. *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. When a local government is processing a post-acknowledgement plan amendment pursuant to ORS 197.610 to 197.625 and a person requests in writing that he or she be provided notice of the decision, the deadline for appealing that decision to LUBA begins to run when that person is provided notice of the decision. *Jacobsen v. City of Winston*, 62 Or LUBA 493 (2010).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where the relevant approval criteria for a variance to allow a 120 foot tall wind turbine require evaluation of the adverse effects of the variance on the neighborhood and neighboring residences, a reasonably accurate description of the location of the proposed turbine is an integral part of the “nature of the decision” under ORS 197.830(4). Where the notice of decision describes the wind turbine as being located “near the center of [a 35 acre] property” but the decision approves the location of the wind turbine near the property line 190 feet from petitioners’ residence, the notice of the decision does not reasonably describe the nature of the decision. *Wright v. Marion County*, 62 Or LUBA 542 (2010).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local government considering an application for a zone change defers consideration of compliance with OAR 660-012-0060 to a later review process that does not involve a comprehensive plan amendment or zone change, the local government must ensure that the Department of Land Conservation and Development (DLCD) receives notice of the subsequent review process by imposing an overlay zone or a condition of approval on the zone change that requires such notice to DLCD. *Willamette Oaks, LLC v. City of Eugene*, 59 Or LUBA 60 (2009).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a party appeals a decision on a permit and that party was not entitled to notice of the permit, the appeal to LUBA must be filed within 21 days after the expiration

of the period for filing a local appeal of the decision established by the local government under ORS 215.416(11). ORS 197.830(4)(b). Where the appeal is filed approximately 18 months after the expiration of the period for filing a local appeal, the appeal must be dismissed. *Thalman v. Marion County*, 58 Or LUBA 23 (2008).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. ORS 215.060 provides that action regarding a comprehensive plan shall have no effect, unless 10 days’ advance public notice of each hearing is published in a newspaper of general circulation. Where the required 10 days’ notice is given, the county’s subsequent decision to adopt different parts of the proposed comprehensive plan amendments by separate ordinances does not require new notice under ORS 215.060. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where an urban renewal plan does not establish standards for implementing a city’s comprehensive plan, the urban renewal plan is not a new “land use regulation” requiring notice to DLCDC under ORS 197.610. *Granada Land Co. v. City of Albany*, 56 Or LUBA 475 (2008).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Petitioners’ arguments to LUBA that a local government failed to give notice of its annexation decision within the deadlines specified by statute and by a regional government provide no basis for reversal or remand, where petitioners raised no issue below concerning the adequacy of the notice and petitioners do not allege that the claimed late notice prejudiced petitioners’ substantial rights. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

25.3.7 Local Government Procedures - Compliance with Statutes - Notice of Decision. An ambiguous finding that is included in a 23-page findings document supporting a subdivision approval decision is not sufficient to provide actual or constructive notice of a prior county decision that approved a land use compatibility statement concerning grading related to that subdivision. *Wolfgram v. Douglas County*, 52 Or LUBA 536 (2006).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A mistake in a city notice of decision regarding the number of days the notice recipient has to file an appeal with LUBA will not extend the statutory deadline for filing an appeal with LUBA. However, where a city does not clearly state that its notice of a post-acknowledgment land use regulation amendment is a “courtesy notice,” rather than notice the city is required to send under ORS 197.615(2), the notice recipient is entitled to 21 days from the date the post-acknowledgment plan amendment notice is provided to file an appeal with LUBA under ORS 197.830(9). *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Under ORS 197.615(2)(a), a petitioner’s appearance during the local

proceedings that led to city adoption of post acknowledgment land use regulation amendments is not sufficient, by itself, to obligate the city to provide individual written notice of its post acknowledgment decision to petitioner. Under ORS 197.615(2)(a), the person making an appearance during such post acknowledgment proceedings must make a written request that the city provide such notice. *Dobson v. City of Newport*, 47 Or LUBA 589 (2004).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Under the second sentence of ORS 197.830(1), the 21-day deadline for filing an appeal with LUBA does not begin to run until the city gives individual written notice of its post acknowledgment land use regulation amendment to persons who are entitled to receive such notice. Even if the Department of Land Conservation and Development is the only person entitled to receive written notice of the city's decision, the agency is always entitled to such notice and all other persons with standing to appeal to LUBA have 21 days from the date notice is given to the Department of Land Conservation and Development to file an appeal. *Dobson v. City of Newport*, 47 Or LUBA 589 (2004).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. If a city wishes to send courtesy notices that post-date the notices that the city is required to send under ORS 197.615, it must make it clear that the later courtesy notice is not notice that the city is required to send under ORS 197.615. If the city fails to do so, the persons who receive the later courtesy notice are entitled to treat that notice as though it is notice that is required under ORS 197.615, and therefore notice that starts the 21-day period for appealing to LUBA on the date the notice was mailed. *Dobson v. City of Newport*, 47 Or LUBA 589 (2004).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Contrary to *dicta* in *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000), “actual notice” of a decision is provided under ORS 197.830(3)(a) only when the local government provides the written notice of decision required by law. Other circumstances that would lead a reasonable person to know that the local government has made a decision, or that would be sufficient to impute such knowledge, may trigger the 21-day appeal period in ORS 197.830(3)(b) for persons who are not entitled to notice of the decision, but such circumstances are not sufficient to trigger the 21 day deadline in ORS 197.830(3)(a) for persons who are entitled to actual notice of the decision. *Frymark v. Tillamook County*, 45 Or LUBA 685 (2003).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. That petitioners signed a petition to the local governing body expressing concern regarding the height of a dwelling is not sufficient to demonstrate knowledge of a building permit to construct that dwelling or the interpretation concerning the proper method of measuring building height contained in that building permit, for purposes of beginning the 21-day deadline for appealing the building permit to LUBA under ORS 197.830(3). *Tirumali v. City of Portland*, 40 Or LUBA 565 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A 1995 decision *denying* a request for a variance to build a house that exceeds

zoning height limits by 6.5 feet does not constitute a decision *approving* construction of a house that is 6.5 feet shorter. An appeal challenging a subsequent building permit that approves construction of a house that is reduced in height is not a collateral attack on the 1995 variance decision and will not be dismissed as untimely filed. *Tirumali v. City of Portland*, 40 Or LUBA 565 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The mailing of notice of a conditional use permit decision pursuant to OAR 661-010-0010(3)(b) necessarily requires that notice be sent to the address that was provided by a person entitled to notice. *Norway Development v. Clackamas County*, 40 Or LUBA 276 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Although a local government cannot be required to provide notice of a land use decision to the correct address when the correct address has not been provided, when the local government has clearly been informed of the correct address, the notice must be sent to the correct address. *Norway Development v. Clackamas County*, 40 Or LUBA 276 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Any procedural error by a local government in failing to provide written notice of a proposed annexation decision to persons other than petitioner resulted in no prejudice to petitioner’s substantial rights, and therefore provides no basis for reversal or remand of the annexation decision, where petitioner learned of the proposal and made a written appearance opposing the proposal. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Reference to “a portion of Sunset Highway” in a notice of proposed annexation decision is likely insufficient to provide reasonable notice of the decision under applicable code and statutory requirements. However, where a petitioner nevertheless was able to determine the nature and scope of the proposal and submit written opposition to the proposal, the petitioner may not successfully assert possible injury to other persons’ substantial rights as a basis for reversal or remand. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local government fails to recognize that it is rendering a permit decision without providing a hearing or the opportunity for a local appeal as required by ORS 215.416(11) or 227.175(10), ORS 197.830(4) provides the applicable deadline for filing an appeal with LUBA. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The “actual notice” standard of ORS 197.830(4)(a) is identical to the “actual notice” standard of ORS 197.830(3)(a). A petitioner receives “actual notice” of a decision when the petitioner is: (1) provided a copy of the decision; (2) provided written notice of

the decision; or (3) circumstances exist that are sufficient to inform the petitioner of both the existence and substance of the decision. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The brief mention in a staff report that an application was “approved in principle” is not sufficient to provide a petitioner with “actual notice” of a final, appealable land use decision pursuant to ORS 197.830(4)(a). *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The “actual notice” requirement of ORS 197.830(5) does not necessarily require receipt of a limited land use decision. “Actual notice” is achieved when a person is informed of both the existence and substance of the decision. *Robinson v. City of Silverton*, 38 Or LUBA 785 (2000).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. ORS 197.830(3)(a) (1997) applies, and a notice of intent to appeal must be filed with LUBA within 21 days after a petitioner receives “actual notice” of a decision, where (1) the city mistakenly fails to realize it should be proceeding under ORS 227.175(10)(a) (1997); (2) the city therefore fails to provide notice to persons who are entitled to receive notice of the decision under ORS 227.175(10)(a) (1997); and (3) no local appeal is available that must be exhausted before appealing to LUBA. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Under ORS 197.830(3)(a) (1997), a petitioner receives “actual notice” of the decision when the petitioner is provided (1) a copy of the decision; (2) written notice of the decision; or (3) information that is equivalent to written notice or a copy of the decision. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where the events a petitioner observed were not sufficient, in and of themselves, to provide “actual notice” of a land use decision more than 21 days before petitioner filed his notice of intent to appeal, the notice of intent to appeal is timely filed under the “actual notice” standard of ORS 197.830(3)(a). That those events may have been sufficient to obligate petitioner to make inquires with the city if the deadline for filing the notice of intent to appeal were governed by the “knew or should have known of the decision” standard in ORS 197.830(3)(b) is irrelevant. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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” DLCDC. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. ORS 197.763(2)(b) and 215.416(11) require counties to provide notice and an opportunity for local appeal to “recognized” neighborhood associations; the county cannot apply its code in a manner that limits notice and appeal rights extended by statute. *McKy v. Josephine County*, 37 Or LUBA 554 (2000).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where the county’s legislation is ambiguous with respect to whether the county “recognizes” a neighborhood association for purposes of statutory notice and local appeal requirements, LUBA will remand to the county for interpretation in the first instance. *McKy v. Josephine County*, 37 Or LUBA 554 (2000).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A local government’s notice of a post-acknowledgment decision is not

sufficient to start the 21-day appeal period in ORS 197.830(8) where the post-acknowledgment decision is not yet final. *Schaffer v. City of Turner*, 35 Or LUBA 744 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Even if no one requests notice of a post-acknowledgment plan amendment decision under ORS 197.615(2), the local government is required to mail notice of the decision to DLCD, thus there is always a mailing requirement under ORS 197.615 from which the period for appealing post-acknowledgment plan amendments is measured. *City of Hillsboro v. Metro*, 34 Or LUBA 775 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The appeal period provided in the second sentence of ORS 197.830(8) applies to any person with standing to appeal, and not only to the person or persons who are entitled to notice under ORS 197.615. *City of Hillsboro v. Metro*, 34 Or LUBA 775 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Whether a person is "adversely affected" within the meaning of ORS 215.416(11)(a) is a fact-specific inquiry that depends upon the nature of the development and its externalities, the proximity of the person's property to the development, and any factors regarding the person's property or activities thereon that render the property more or less susceptible to impacts from the development. *Wilbur Residents v. Douglas County*, 34 Or LUBA 634 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Merely because a person owns property from which he can see or hear a proposed development does not necessarily render that person adversely affected by the decision. *Wilbur Residents v. Douglas County*, 34 Or LUBA 634 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Petitioners demonstrate they are adversely affected by a sewage treatment facility, where there is no attempt to rebut petitioners' allegations that they are adversely affected because they are within "sight and smell" of the facility and petitioners also allege "direct, specific, tangible and negative impacts" from the proposed facility. *Wilbur Residents v. Douglas County*, 34 Or LUBA 634 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a county makes a permit decision without a hearing and fails to send the notice of decision required by ORS 215.416(11)(a) to persons "adversely affected" by the decision, such adversely affected persons have standing to appeal to LUBA within 21 days of actual notice of the decision. *Wilbur Residents v. Douglas County*, 34 Or LUBA 634 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where notice of a permit decision rendered without a hearing is not provided to

persons "adversely affected" by the decision, such adversely affected persons' right to a local appeal is denied and their substantial rights are prejudiced. *Wilbur Residents v. Douglas County*, 34 Or LUBA 634 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where the procedure followed by the county to approve a permit only provided the applicant a right to participate or appeal, the county may not rely on ORS 215.416(11)(a) to contend petitioner lacks standing to appeal because petitioner is not "adversely affected." *Hugo v. Columbia County*, 34 Or LUBA 577 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A local government fails to comply with the notice of decision requirement of ORS 215.416(11)(a) when it fails to send notice to a tribal government's registered agent, where the tribal government has no tax address or other address for receipt of land use notices and the county has for over a decade provided notice to the registered agent. *Confederated Tribes v. Jefferson County*, 34 Or LUBA 565 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Providing a copy of the decision constitutes the notice of the decision and opportunity for appeal required by ORS 215.416(11)(a) if it unambiguously states that a particular decision has been made and provides sufficient information concerning the opportunity for a local appeal. *Confederated Tribes v. Jefferson County*, 34 Or LUBA 565 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Whether notice of decision is "required" under ORS 197.830(3) is determined by the procedure the local government followed, not by the procedure the local government should have followed. *Fechtig v. City of Albany*, 34 Or LUBA 561 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Petitioners' appeal was timely filed pursuant to the second sentence of ORS 197.830(8) where the city failed to provide notice of the decision to petitioners pursuant to ORS 197.615(2). Petitioners were entitled to notice under ORS 197.615(2) notwithstanding that they requested notice of a limited land use decision rather than a land use decision. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The statutory appeal period under ORS 197.830(8), which provides that the 21-day deadline to appeal to LUBA does not begin until required notice of the decision is given, applies notwithstanding the failure of a local government to correctly process a comprehensive plan or land use regulation amendment under ORS 197.610 to 197.625, and, accordingly, to provide the notice of decision as required by ORS 197.615. *ODOT v. City of Oregon City*, 34 Or LUBA 57 (1998).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. When amendments to a county's comprehensive plan are processed according to post-acknowledgment procedures, the second sentence of ORS 197.830(8) governs, and appeals may be filed within 21 days of the date the decision is mailed, rather than the date the decision becomes final. *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A plan and land use regulation amendment processed pursuant to post-acknowledgment procedures may be appealed within 21 days of the date the decision is mailed, as provided in ORS 197.830(8), notwithstanding a local government's failure to comply with all required post-acknowledgment procedures. *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A notice of intent to appeal to LUBA must be filed within 21 days of the date the decision becomes final, and misleading or outdated information regarding appeals to LUBA provided in a local government's notice of final decision does not affect that deadline. *Elinski v. City of Lincoln City*, 33 Or LUBA 670 (1997).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Petitioners are not entitled to notice of a permit decision and an opportunity for a local appeal as a party adversely affected or aggrieved under ORS 215.416(11)(a), where petitioners only allege they will be adversely affected by solid waste disposal, but the challenged decision approves a waste treatment facility and does not establish, control or limit where the treated waste will be disposed. *Wilbur Residents v. Douglas County*, 33 Or LUBA 412 (1997).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A county's delay in providing petitioner with notice of decision does not toll the 21-day appeal period set forth in ORS 197.830(8), and under *Wicks-Snodgrass v. City of Reedsport*, 148 Or App 217, 939 P2d 625 (1997), LUBA has no jurisdiction over an appeal filed more than 21 days after the county's decision became final. *Michael-Mark v. Yamhill County*, 33 Or LUBA 409 (1997).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Under ORS 197.610 to ORS 197.625, only state notice requirements must be followed to avoid tolling, under ORS 197.830(3), the 21-day appeal period provided in ORS 197.830(8). *Petersen v. Columbia County*, 33 Or LUBA 253 (1997).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a secretarial processing sheet does not list names of persons who testified at a hearing, a notation on the sheet that "Person testifying/submitting comments" was sent notice of decision is insufficient to demonstrate that petitioner actually was sent the required notice of decision. *Shaffer v. City of Salem*, 33 Or LUBA 57 (1997).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A party cannot claim an exception to the appearance requirement of ORS 197.830(2)(b) when that party is not entitled to notice of a decision, even where the local decision maker has sent to that party notice of related previous decisions. *DLCD v. Polk County*, 33 Or LUBA 30 (1997).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. A decision becomes final for purposes of an appeal to LUBA when the prescribed written notice of decision is mailed or personally delivered to the party seeking to appeal. *J.C Reeves Corp. v. Washington County*, 32 Or LUBA 263 (1996).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. If statutory and local code requirements are satisfied, the failure of certain affected persons to receive notice of a zoning ordinance amendment does not make notice of the amendment legally inadequate. *Waite v. City of La Grande*, 31 Or LUBA 77 (1996).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. If a city makes a land use decision without providing a required hearing, ORS 197.830(3) extends the LUBA appeal period. However, ORS 197.830(5) limits the extension to three years unless petitioners establish that the required notice was not provided. *Caraher v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. If petitioners do not establish they were entitled to notice of a decision, the fact that they did not receive such notice is not evidence that the notice required of the city was not provided. *Caraher v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The existence of procedural error resulting from defects in a notice of final decision fails to establish prejudice to substantial rights in the absence of a causal relationship between the defects and petitioner's failure to participate in the process. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. When the city does not deliver notice of a comprehensive plan map amendment and facilities plan amendment to DLCD, as required by ORS 197.615(1), the amendments will not be deemed acknowledged under ORS 197.625(1) by the passage of time. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. While ORS 215.416(11) allows a county to make land use permit decisions without a hearing, it protects an individual's right to participate in a local hearing by requiring that notice of the decision be given to affected persons and that the opportunity for a *de novo* local appeal be provided. *Tarjoto v. Lane County*, 29 Or LUBA 408 (1995).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. When a party is entitled to notice of a post-acknowledgment plan or land use regulation amendment under ORS 197.615(2)(a)(A) and (B), ORS 197.830(8) provides that the local government decision becomes final as to that party on the date the notice of the decision is mailed, rather than on the date the notice of the decision is received. *1000 Friends of Oregon v. Columbia County*, 29 Or LUBA 597 (1995).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where ORS 227.173(3) requires a city to give written notice of its final decision to petitioner, the 21 day period provided by ORS 197.830(8) for filing a notice of intent to appeal to LUBA cannot expire before petitioner receives the notice to which she is entitled. Where such required written notice is not given, a notice of intent to appeal filed after a city planner orally informs petitioner that the city considers certain city council minutes to be its final decision is timely filed. *Noble v. City of Fairview*, 27 Or LUBA 649 (1994).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. If a local government does not provide notice to DLCD of a post-acknowledgment comprehensive plan or land use regulation amendment, as required by ORS 197.610 and 197.615, it improperly construes substantive provisions of applicable law and, under ORS 197.835(7)(a)(D), the challenged post-acknowledgment amendment decision must be remanded. *Oregon City Leasing, Inc. v. Columbia County*, 26 Or LUBA 203 (1993).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local hearing is provided and a party is entitled to written notice of the decision under ORS 215.416(10), ORS 197.830(8) rather than ORS 197.830(3) establishes the deadline for filing a notice of intent to appeal. Under ORS 197.830(8), a notice of intent to appeal must be filed within 21 days after a decision becomes final. *DLCD v. Crook County*, 25 Or LUBA 826 (1993).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Under ORS 197.830(8) and 215.416(10), a decision becomes final for purposes of appealing to LUBA "only after the required written notice of the decision is mailed or personally delivered to the party seeking to appeal." *League of Women Voters v. Coos County*, 82 Or App 673, 729 P2d 588 (1986). *DLCD v. Crook County*, 25 Or LUBA 826 (1993).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. If a notice of intent to appeal a post-acknowledgment zone change is filed more than 21 days after petitioner was given the notice of decision it is entitled to under ORS 197.615, the appeal must be dismissed. *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The purpose of the notice of decision required by ORS 227.173(3) is to inform the parties that a city has made a final, appealable decision on a permit application. A notice that identifies the application to which it relates, states the city council made a decision denying the application on a particular date and provides that the city council's decision may be appealed to LUBA, satisfies ORS 227.173(3). *Horizon Construction, Inc. v. City of Newberg*, 25 Or LUBA 656 (1993).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where the challenged decision approves a "permit," and the petitioner was entitled to written notice of the decision under ORS 227.173(3), the petitioner has 21 days from the date the notice was mailed to him to appeal the challenged decision to LUBA. *A Storage Place v. City of Tualatin*, 24 Or LUBA 637 (1993).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Under ORS 197.830(3), where a local government renders a decision without providing a hearing, an appeal to LUBA must be filed within 21 days of actual notice of the decision, where notice of the decision is required, or within 21 days of the date a person knew or should have known of the decision, where no notice of the decision is required. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a person participated in the legislative proceedings that led to the challenged decision and also participated in a related land use proceeding where the challenged decision was discussed, that person knew or should have known of the challenged decision as early as the date the discussion of the challenged decision occurred. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. The 21-day period for filing a notice of intent to appeal established by ORS 197.830(8) begins to run only after the party seeking to appeal is given notice of the local government decision to which he is entitled by statute. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. ORS 197.830(8) tolls the running of the time for filing a notice of intent to appeal a post-acknowledgment comprehensive plan or land use regulation amendment for a petitioner who did not receive notice to which *that petitioner* is entitled under ORS 197.615. It does not toll the time for the filing of *all* notices of intent to appeal post-acknowledgment amendments simply because DLCD, or any other person entitled to notice under ORS 197.615, was not given such notice. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a city approves a permit without providing the public hearing or notice of decision and opportunity for a local appeal required by ORS 227.175(3) and (10), a notice of intent to appeal at LUBA is timely filed if it is filed within 21 days after petitioners received actual notice of the permit decision. *Citizens Concerned v. City of Sherwood*, 22 Or LUBA 390 (1991).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Individual written notice of decision is not required for a county to make a legislative land use decision. *Crone v. Clackamas County*, 21 Or LUBA 102 (1991).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local government provides neither notice of the decision nor an opportunity to appeal a decision rendered without a public hearing, to anyone other than the applicant, it does not comply with ORS 227.175(10). *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local government fails to provide the statutorily required written

notice of decision to a party entitled to receive such notice, the 21 day deadline for filing an appeal with LUBA does not begin to run until the required written notice of decision is provided. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local government fails to provide the statutorily required notice of hearing and hearing prior to making a decision on a permit, a person does not thereby become entitled to written notice of the decision simply because that person might have appeared and become a party entitled to written notice of the decision had the statutorily required notice of hearing and hearing been provided. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where petitioners were entitled under ORS 215.416(11) to written notice of a local permit decision made without a hearing, and such written notice was not given, the time for filing petitioners' local appeal did not begin to run and, therefore, their subsequent appeal to the planning commission was timely filed. *Komning v. Grant County*, 20 Or LUBA 481 (1990).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. ORS 197.615(2)(a) requires that a local government give notice of decisions amending its acknowledged comprehensive plan and land use regulations to persons who participate during the local proceedings and request such notice in writing. *Club Wholesale v. City of Salem*, 19 Or LUBA 576 (1990).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local government has no rules establishing specific procedures or forms for persons participating in post-acknowledgment plan and land use regulation amendment proceedings to utilize in making a written request for notice under ORS 197.615(2)(a)(B), and has no rules establishing to whom requests for such notice must be directed, a request for a copy of the city's final *decision* directed to the city attorney is sufficient to satisfy ORS 197.615(2)(a)(B). *Club Wholesale v. City of Salem*, 19 Or LUBA 576 (1990).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where a local government provides a party with a copy of the decision amending its comprehensive plan and land use regulations, but fails to advise the party of the date the challenged decision became final or of the requirements for appealing the decision to LUBA, the notice requirements of ORS 197.615(2)(b)(B) and (D), applicable to post-acknowledgment plan and land use regulation amendments, are not satisfied. *Club Wholesale v. City of Salem*, 19 Or LUBA 576 (1990).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. 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).

25.3.7 Local Government Procedures – Compliance with Statutes – Notice of Decision. Where the petitioner was never provided the written notice to which it was entitled under ORS 227.173(3), the 21-day period for the petitioner to appeal to LUBA did not expire. *Harvard Medical Park, Ltd. v. City of Roseburg*, 19 Or LUBA 555 (1990).