**24.2.1 Standing – Before LUBA – Generally.** Where LUBA concludes it lacks jurisdiction because the challenged decision is not a "land use decision" under ORS 197.015(10)(a), LUBA will not resolve a challenge to petitioner's standing to appeal the decision to LUBA. *McLaughlin v. Douglas County*, 76 Or LUBA 77 (2017).

**24.2.1 Standing – Before LUBA – Generally.** A county cannot apply more rigorous standing or timely appeal requirements on (1) local appeals of permit decisions than are authorized under ORS 215.416(11) or (2) local appeals of permit decisions under circumstances where, but for the county choosing to provide a local appeal, the petitioner would have the right to appeal the permit decision directly to LUBA under ORS 197.830(3). *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

**24.2.1 Standing – Before LUBA – Generally.** Observation of well-digging equipment traveling on a dead-end road toward one of several nearby properties is insufficient in itself to place a reasonable person on "constructive" or "inquiry notice" that the county had approved development on a specific property, for purposes of ORS 197.830(3)(b) and local code equivalents. *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

**24.2.1 Standing – Before LUBA – Generally.** Information sufficient to place a petitioner on "inquiry notice" for purposes of ORS 197.830(3)(b) must, at a minimum, allow the petitioner to identify the property on which development has been approved. If the petitioner must conduct factual inquiries to determine which property in the neighborhood is being developed, the 21-day deadline to discover the decision approving the development may expire before the petitioner has acquired information sufficient to make effective inquiries with the local government. *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

**24.2.1 Standing – Before LUBA – Generally.** Information sufficient to place a petitioner on "inquiry notice" for purposes of ORS 197.830(3)(b) must indicate to a reasonable person that the local government has likely issued a land use approval of some kind. Observation of road traffic associated with well-digging activities is insufficient in itself, because the activity of digging a well does not necessarily mean that the county has issued a land use approval. *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

**24.2.1 Standing – Before LUBA – Generally.** Where the notice of a hearing described a proposal for a conditional use permit for a home occupation to host events in a pole barn, and the county's decision approved a conditional use permit for a home occupation to host events in a pole barn, a petitioner may not rely on ORS 197.830(3) to file its appeal, because the local government did not make a land use decision that was different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions. *Willis v. Clackamas County*, 76 Or LUBA 479 (2017).

**24.2.1 Standing – Before LUBA – Generally.** LUBA will decline to exercise its discretion to grant petitioners an opportunity on remand from the Court of Appeals to offer additional evidence to establish standing to appeal a land use decision to LUBA under ORS 197.830(3), where petitioners had multiple opportunities in the initial appeal to offer the additional evidence, which was at all times within petitioners' possession, but failed to do so. *Rogue Advocates v. Jackson County*, 75 Or LUBA 174 (2017).

**24.2.1 Standing – Before LUBA – Generally.** Exercise of LUBA's discretion to allow petitioners an opportunity on remand from the Court of Appeals to offer additional evidence to establish standing to appeal to LUBA would be inconsistent with the legislative policy at ORS 197.805 that time is of the essence in reaching finality in land use matters, because granting the motion would entail a lengthy round of pleadings, discovery, depositions, and resolution of conflicting evidence that would significantly delay reaching finality in the appeal. *Rogue Advocates v. Jackson County*, 75 Or LUBA 174 (2017).

**24.2.1 Standing – Before LUBA – Generally.** Exercise of LUBA's discretion to allow petitioners an opportunity on remand from the Court of Appeals to offer additional evidence to establish standing to appeal to LUBA would be inconsistent with the legislative policy at ORS 197.805 that LUBA's decisions be made consistent with sound principles of judicial review, because it would depart from the general principle that LUBA's jurisdiction over the appeal must be established prior to LUBA's issuance of its final opinion resolving the merits of an appeal. *Rogue Advocates v. Jackson County*, 75 Or LUBA 174 (2017).

**24.2.1 Standing – Before LUBA – Generally.** For purposes of the "knew or should have known" standard in ORS 197.830(3)(b) to gain standing to appeal to LUBA, the actual or constructive knowledge of a co-owner of property adjoining development is not imputed as a matter of law to the other co-owner, the petitioner. *Grimstad v. Deschutes County*, 74 Or LUBA 360 (2016).

**24.2.1 Standing – Before LUBA – Generally.** The presence of surveyor stakes on adjoining property is not sufficient to provide actual or constructive knowledge that a county has issued a lot of record decision for the property, for purposes of the "knew or should have known" standard at ORS 197.830(3)(b), because a property owner may hire a surveyor for reasons that have nothing to do with development or land use approvals. *Grimstad v. Deschutes County*, 74 Or LUBA 360 (2016).

**24.2.1 Standing – Before LUBA – Generally.** Persons who own property within sight or sound of property that is the subject of an appeal are presumptively adversely affected by an appealed decision concerning the property. However, a petitioner who claims its property is located "approximately 6,280 feet" from the subject property, and does not claim that its property is within sight or sound, is not presumptively adversely affected by the decision. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 188 (2016).

**24.2.1 Standing – Before LUBA – Generally.** Nothing in the express language of ORS 197.830(3) identifies it as either the exclusive or a required statutory basis to appeal a decision in cases where a hearing is not provided. *Devin Oil Co. Inc. v. Morrow County*, 70 Or LUBA 420 (2014).

**24.2.1 Standing – Before LUBA – Generally.** OAR 661-010-0045(1) limits LUBA's consideration of extra-record evidence to circumstances where there are "disputed factual allegations" in the parties briefs concerning, among other things, standing. Where there is no dispute in the parties' briefs regarding petitioner's standing to appeal to LUBA, LUBA will deny a motion to take evidence outside the record to consider evidence of a lease that the petitioner

asserts may be necessary to establish injury and hence constitutional standing under federal law. *Cosner v. Umatilla County*, 65 Or LUBA 9 (2012).

**24.2.1 Standing – Before LUBA – Generally.** LUBA lacks the equitable power of a court to apply the doctrine of laches to dismiss an appeal based on allegations that a petitioner knew from conversations with a neighbor about the challenged decision long before filing the LUBA appeal. The legislature has comprehensively prescribed in ORS 197.830(3) and other relevant statutes the deadlines to appeal land use decisions to LUBA, including what states of knowledge are relevant in applying those deadlines. *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

**24.2.1 Standing – Before LUBA – Generally.** Standing to appeal a post-acknowledgment plan amendment to LUBA is governed by ORS 197.620(1), which requires only that the petitioner participate in the proceedings below. No statute governing LUBA requires that petitioners who wish to advance a facial constitutional challenge to an ordinance at LUBA must first demonstrate that the ordinance injures their legally protected interests. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

**24.2.1 Standing – Before LUBA – Generally.** When the original applicant would be allowed to intervene in an appeal under ORS 197.830(7)(b)(A) as the "applicant who initiated the action before the local government," the original applicant's successor in interest may also intervene. *Biggerstaff v. Yamhill County*, 58 Or LUBA 665 (2008).

**24.2.1 Standing – Before LUBA – Generally.** Persons who made an appearance during the local government proceedings that led to a city decision that was remanded by LUBA satisfy the ORS 197.830(7)(b) requirement that a person who moves to intervene in a subsequent LUBA appeal of the city's decision following LUBA's remand must have "appeared." The appearance during the initial local government proceedings is sufficient to satisfy the ORS 197.830(7)(b) appearance requirement, and it does not matter that the local government refused those persons' attempt to appear during the remand proceedings. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

**24.2.1 Standing – Before LUBA – Generally.** Where a person attempts but is denied the right to appear during a local government's proceedings that lead to a land use decision, in a subsequent LUBA appeal that attempt to appear is sufficient to satisfy the ORS 197.830(7)(b) appearance requirement, to allow that person to intervene in the LUBA appeal to assign error to the local government's refusal to allow a local appearance. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

**24.2.1 Standing – Before LUBA – Generally.** Where persons appeared during the local government proceedings that led to a LUBA appeal and remand, that local appearance is sufficient to satisfy the ORS 197.830(7)(b) requirement for an appearance to have standing to intervene in a subsequent LUBA appeal challenging the local government's decision following the LUBA remand. For purposes of satisfying the ORS 197.830(7)(b) "appearance" requirement, it does not matter that those persons did not file a brief in the first LUBA appeal. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

**24.2.1 Standing – Before LUBA – Generally.** The general standing rule that governs standing to appeal land use decisions other than post-acknowledgement plan and land use regulation amendments is set out at ORS 197.830(2) and the first sentence of ORS 197.830(9). Under those statutes, a petitioner must have "[a]ppeared before the local government," and must file a notice of intent to appeal with LUBA "not later than 21 days after the date the decision sought to be reviewed becomes final." *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

**24.2.1 Standing – Before LUBA – Generally.** A petitioner appealing a post-acknowledgment plan and land use regulation amendment to LUBA must have "participated" in the proceedings that led to the amendment, whereas a petitioner appealing other kinds of land use decisions only must have "appeared" in the local proceedings. The participation standard is higher than the appearance standard. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

**24.2.1 Standing – Before LUBA – Generally.** Under the first sentence of ORS 197.830(9), which applies to appeals of land use decisions other than post-acknowledgment plan amendments, the 21-day appeal period commences on the date the decision is final. Under the second sentence of ORS 197.830(9), which applies to applies to appeals of post-acknowledgment plan and land use regulation amendments, the notice of intent to appeal must be "filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615." *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

**24.2.1 Standing – Before LUBA – Generally.** Where a petitioner files a timely notice of intent to appeal a post-acknowledgment land use regulation amendment within the time prescribed by the second sentence of ORS 197.830(9) but that petitioner did not participate in the local proceedings that led to the challenged decision, that petitioner does not have standing to appeal under the general standing rule that applies to appeals of post-acknowledgment land use regulation amendments. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

**24.2.1 Standing – Before LUBA – Generally.** Read in context, the ORS 197.830(2) requirement that a person must file a notice of intent to appeal in order to "petition [LUBA] for review" does not implicitly prohibit parties who have not filed a notice of intent to appeal from filing a cross-petition for review, as provided by OAR 661-010-0030(7). *Horning v. Washington County*, 51 Or LUBA 303 (2006).

**24.2.1 Standing – Before LUBA – Generally.** The legislature's use of different terms to describe the actions required to have standing to appeal to LUBA is some indication that the legislature intended to impose different standing requirements. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

**24.2.1 Standing – Before LUBA – Generally.** To have standing to appeal a post-acknowledgment plan amendment under ORS 197.620(1) an appellant must have "participated" during the local proceedings, whereas to have standing to appeal under ORS 197.830(2) an appellant must have "appeared." The dictionary definitions of "participated" and "appeared" suggest more is required to participate than to appear, but those definitions do not identify what more is required. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

**24.2.1 Standing – Before LUBA – Generally.** When ORS 197.620(1) was first adopted, the requirement that a person must have "participated" during the local proceedings that led to adoption of a post-acknowledgment plan amendment required that an appellant have done more than make a bare neutral appearance during the local proceedings. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

**24.2.1 Standing – Before LUBA – Generally.** The text, context and statutory history of ORS 197.620(1) and ORS 197.830(2) establish that while a bare neutral appearance will satisfy the standing requirement under ORS 197.830(2) that an appellant must have "appeared," such a bare neutral appearance will not satisfy the standing requirement under ORS 197.620(1) that an appellant must have "participated." To have participated under ORS 197.620(2), an appellant must have asserted a position on the merits. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

**24.2.1 Standing – Before LUBA – Generally.** Standing to appeal to LUBA is a matter of state law, and a local government cannot adopt code provisions that purport to enlarge or diminish the requirements for establishing standing to appeal to LUBA. *Multnomah County v. Multnomah County*, 46 Or LUBA 365 (2004).

**24.2.1 Standing – Before LUBA – Generally.** The legislature did not contemplate in adopting the standing requirements to appeal to LUBA at ORS 197.830(2) that a local government could "appear" before itself and thereby gain standing to appeal the local government's own decision to LUBA. *Multnomah County v. Multnomah County*, 46 Or LUBA 365 (2004).

**24.2.1 Standing – Before LUBA – Generally.** While it may be possible for a local government to adopt code provisions that allow a department or subdivision within the local government to "appear" before the local government decision maker and establish standing for that department or subdivision to appeal the final land use decision to LUBA for purposes of ORS 197.830(2), the statute does not permit a local government to appeal its own decision and appear before LUBA as both petitioner and respondent. *Multnomah County v. Multnomah County*, 46 Or LUBA 365 (2004).

**24.2.1 Standing – Before LUBA – Generally.** When a party submits an affidavit in response to a jurisdictional challenge and the assertions in that affidavit are unchallenged, absent some other reason to question those assertions LUBA will accept them as true for purposes of resolving a jurisdictional issue. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

**24.2.1 Standing – Before LUBA – Generally.** Under *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001), a party seeking judicial review of a LUBA decision under ORS 197.850(1), in addition to meeting the statutory standing requirements, must also establish that the Court of Appeals' decision will have a practical effect on the appealing party's rights. LUBA is an executive branch agency rather than a court. Therefore, the standing requirements to appeal a local government land use decision to LUBA are established by ORS 197.830; and the statute does not require that the appellant establish that LUBA's decision will have a practical effect on the appellant. *Doob v. Josephine County*, 41 Or LUBA 569 (2001).

**24.2.1 Standing – Before LUBA – Generally.** The standing concerns identified by the Court of Appeals in *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001), involve an appellant's standing before the judicial branch. Because LUBA is part of the executive branch, the separation of powers problem involved in *Utsey* does not apply to a petitioner's standing before LUBA. *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 247 (2002).

**24.2.1 Standing – Before LUBA – Generally.** ORS 197.830(7)(b)(B) allows intervention in a LUBA appeal by "[p]ersons who appeared before the local government, * * * orally or in writing." A city is a "person," as that term is defined by ORS 197.015(18). *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

**24.2.1 Standing – Before LUBA – Generally.** Persons who appeared during local proceedings may intervene in a LUBA appeal on the side of respondent without demonstrating that the appeal will result in any actual damage or harm. *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

**24.2.1 Standing – Before LUBA – Generally.** ORS 197.830(6)(b)(A) permits an applicant to intervene in proceedings before LUBA even if the applicant did not appear below, so long as the motion to intervene is filed within 21 days of the date the notice of intent to appeal is filed. *Dowrie v. Benton County*, 37 Or LUBA 998 (1999).

**24.2.1 Standing – Before LUBA – Generally.** An internal vote prohibiting an unincorporated organization from pursuing an appeal does not, in itself, affect that organization's standing before LUBA. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

**24.2.1 Standing – Before LUBA – Generally.** As it applies to appeals to LUBA, the definition of "person" in ORS 197.015(8) includes an association. *Helvetia Community Assoc. v. Washington County*, 31 Or LUBA 446 (1996).

**24.2.1 Standing – Before LUBA – Generally.** A party has standing to appeal a moratorium if it has interests that are substantially affected by it. *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604 (1995).

**24.2.1 Standing – Before LUBA – Generally.** 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).

**24.2.1 Standing – Before LUBA – Generally.** Being the owner of the property that is the subject of a LUBA appeal proceeding does not automatically establish that person's standing to intervene. *Noble v. City of Fairview*, 28 Or LUBA 711 (1994).

**24.2.1 Standing – Before LUBA – Generally.** ORS 197.830(2) establishes two requirements for standing to bring a LUBA appeal. Petitioner must have (1) filed a timely notice of intent to appeal, and (2) appeared during the local proceedings. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

**24.2.1 Standing – Before LUBA – Generally.** Where an attorney states during local proceedings that he represents unspecified "appellants" and "opponents" but (1) nothing in the local record establishes who such persons are, and (2) the attorney fails to submit an affidavit or other evidence to establish who such persons are, the attorney's appearance below is inadequate to confer standing on the unspecified appellants and opponents. *Townsend v. City of Newport*, 21 Or LUBA 286 (1991).

**24.2.1 Standing – Before LUBA – Generally.** The amendments to ORS 197.830(3) adopted by the 1989 legislature, concerning standing to appeal a land use decision made without hearing or with inadequate notice of hearing, do not apply to decisions made before October 3, 1989, the effective date of the amendments. *Torgeson v. City of Canby*, 19 Or LUBA 623 (1990).

**24.2.1 Standing – Before LUBA – Generally.** Where standing is not an issue, an affidavit attached to the petition for review for the sole purpose of establishing petitioner's standing is not subject to a motion to strike. *Stefan v. Yamhill County*, 18 Or LUBA 820 (1990).