25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where separate applications to partition two parcels under a single ownership into three parcels each receive final approval in the same calendar year, the resultant units of land are not "lawfully created" where state statute requires that divisions of "an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership" receive subdivision approval. *Landwatch Lane County v. Lane County*, 79 Or LUBA 65 (2019).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a county approves a "forest template dwelling" under ORS 215.750(1)(c), arguments that the county relied on units of land that were unlawfully created through partition approval, rather than subdivision approval, provide no basis for reversal or remand since any procedural error the county committed in approving the land division cannot be collaterally attacked in an appeal of a subsequent decision that depends on the prior approval. *Landwatch Lane County v. Lane County*, 79 Or LUBA 65 (2019).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The fact that an adopted local code amendment includes language which was not included in the notice to DLCD required by ORS 197.610(1) is not by itself sufficient to explain why the notice was inadequate so as to require reversal or remand of the amendment decision. *McCaffree v. Coos County*, 79 Or LUBA 512 (2019).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The statute of limitations in ORS 131.125(8)(c) is inapplicable to a county's separate land use enforcement proceeding procedures pursuant to a county code that does not contain any time limitation for enforcement actions for violations of the county's land use code, because the county has authority over land use code enforcement matters independent from any statutorily derived authority in ORS Title 14 pursuant to county charter, and because ORS 153.030(4) expressly provides that "[n]othing in this chapter affects the ability of any other political subdivision of this state to provide for the administrative enforcement of the charter, ordinances, rules and regulations of the political subdivision, including enforcement through imposition of monetary penalties." *A Walk on the Wild Side v. Washington County*, 78 Or LUBA 356 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. When the city has a general track for requesting planned unit development (PUD) approval and a clear and objective track for requesting PUD approval, the city is not required to demonstrate that the applicant is able to gain approval for some development on the subject property under its needed housing track. ORS 197.307(6)(a) requires only that the city allow the applicant the "option of proceeding" under the needed housing track, and does not require a guarantee or demonstration of any kind that development is likely to be approved under the clear and objective approval standards in the needed housing track. *Dreyer v. City of Eugene*, 78 Or LUBA 391 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Senate Bill (SB) 1051 (2018), section 12 did not require cities to amend their land use regulations to implement SB 1051 by July 1, 2018. SB 1051 itself is silent regarding any requirement, much less a deadline for a city to amend its land use regulations to comply with its provisions. SB 1051, section 12

provides for a delayed "operative date" of July 1, 2018. That delayed operative date provides a grace period before which the provisions of SB 1051 did not apply, and after which, the statute applies directly and cities are required to "allow" accessory dwelling in areas required by the statue. But SB 1051 does not direct cities as to the mechanism by which to allow accessory dwellings. *Home Builders Assoc. v. City of Eugene,* 78 Or LUBA 441 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. While ORS 197.646(1) requires the city to amend its land use regulations to implement SB 1051 (2018), ORS 197.646(2)(b) requires the Land Conservation and Development Commission (LCDC) to establish by rule the time period within which a local government must amend its code to implement a new land use statute "if the legislation does not specify a time period for compliance[.]" LCDC has not adopted any rules specifying a time period for implementation of SB 1051, and SB 1051 itself does not require cities to adopt amendments to their codes that implement all of the provisions of SB 1051 by July 1, 2018. *Home Builders Assoc. v. City of Eugene,* 78 Or LUBA 441 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where in evaluating petitioner's zone verification request pursuant to Eugene Code (EC) 9.2741(2), the city failed to consider the ORS 197.312(5) requirement that all accessory dwellings must be allowed "subject to reasonable local regulations relating to siting and design," the proper remedy is for LUBA to remand the decision to the city for the city to consider in the first instance whether EC 9.2741(2) is a "reasonable local regulation[] relating to siting and design" pursuant to ORS 197.312(5). *Kamps-Hughes v. City of Eugene,* 78 Or LUBA 457 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A city's rejection of petitioner's as-applied challenge of a city's appeal fee during the city's proceeding on intervenor's land use application, and legal challenges to the city's future assessment of actual attorney's fees is not excluded from LUBA's jurisdiction by the "fiscal" exception. However, to the extent petitioner challenges the amount of the actual attorney fees, that challenge is outside the Board's scope of review because that fee dispute arose after the city issued the fee invoice and after the city made a decision on petitioner's underlying appeal, and is therefore a "fiscal" decision. The fact that the local record includes the invoice for the actual attorney fees petitioner was charged for his local appeal does not convert the amount of the fees in that invoice into an issue that is reviewable by LUBA. *Nicita v. City of Oregon City,* 78 Or LUBA 463 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. In an as-applied challenge, a petitioner cannot challenge the manner in which the city adopted its appeal fee structure. Instead, LUBA's inquiry regarding petitioner's as-applied challenge to the appeal fee charged by the city, is whether petitioner has produced a *prima facie* case that the fee that the city charged petitioner pursuant to the city's previously adopted fee schedule is "more than the average cost of such appeals or the actual cost of the appeal." ORS 227.180(1)(c). *Nicita v. City of Oregon City,* 78 Or LUBA 463 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A criterion that requires a county to determine whether a proposed short term rental home occupation will not "unreasonably interfere" with other uses permitted in the zone requires the exercise of discretion, and a decision applying that criterion is a decision on a permit as defined in ORS 215.402(4). A

county errs in failing to process the short term rental home occupation application according to the procedures for permits in the local code. *Hood River Valley Residents' Committee v. Hood River County*, 77 Or LUBA 7 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Based on an ESEE consequences analysis regarding conflicting uses, under OAR 660-023-0040(4) and (5), a county must develop a program to achieve Goal 5, and determine whether to allow, limit, or prohibit conflicting uses. A local government errs in its ESEE analysis and in its ultimate decision to modify its acknowledged Goal 5 program to eliminate the prohibition on churches in the Wildlife Area Combining Zone, when it relied in part on the cost of defending its existing Goal 5 program against a hypothetical Religious Land Use and Institutionalized Persons Act (RLUIPA) lawsuit to support its decision to achieve Goal 5 by allowing without limits a new conflicting use, without providing an analysis establishing the county's Goal 5 program would be legally vulnerable to losing a hypothetical RLUIPA lawsuit if one were brought. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. To allow a conflicting use without limit under OAR 660-023-0040(5)(c), a county's ESEE analysis must (1) demonstrate that the conflicting use is of sufficient importance relative to the resource site, and (2) must indicate why measures to protect the resource "to some extent should not be provided." OAR 660-023-0040(5)(c) does not prohibit the county from allowing a conflicting use without limit, if there is another option that would both fully protect the resource at issue and satisfy the motivations prompting the county to decide in favor of the conflicting use. Instead, OAR 660-023-0040(5)(c) requires the county to justify its choice to allow a conflicting use without limit, and that justification must include a demonstration that alternatives, such as imposing limits or measures to provide some protection for the resource consistent with OAR 660-023-0040(5)(b) should not be provided. Assuming that demonstration is made, OAR 660-023-0040(5) and Goal 5 do not compel the local government to choose alternatives that fully or partially protect the resource. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. In the context of a county's Goal 5 analysis, LUBA will reject the county's argument that there are no measures that the county could adopt to protect wildlife habitat from the negative impacts of churches without running afoul of a Religious Land Use and Institutionalized Persons Act (RLUIPA) requirement–that governments not impose a "substantial burden" on religious exercise–where the county's ESEE analysis includes no evaluation of any measures or any findings on this point, and without actually evaluating any measures that would provide some protection to wildlife resources, it is difficult to understand how the county could reach a conclusion that no measures could be adopted to protect wildlife resources without also imposing a "substantial burden" on religious exercise. In such a circumstance, remand is necessary for the county to adopt an ESEE analysis that either does not rely on the mere threat of RLUIPA litigation, or that actually evaluates whether the county's existing Goal 5 program is inconsistent with the RLUIPA Equal Terms or Substantial Burden requirements, so that the county can consider whether there are measures it can adopt pursuant to OAR 660-023-0040(5)(b) and (c) to reduce impacts on wildlife resources and include those evaluations in the revised ESEE analysis. As part of that analysis, the county may consider,

if necessary, whether identified measures would impose a "substantial burden" on the free exercise of religion. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 92.190(3) embodies a requirement that, where local governments choose to provide an alternative procedure for property line adjustments other than using replat procedures, that alternative procedure must include local government approval of some kind. However, ORS 197.190(3) does not specify any particular procedures or form of approval, and does not necessarily require that final approval be obtained prior to recordation of the adjustment deeds. Given the absence of more specific statutory requirements a county does not err in verifying property as a legal lot, notwithstanding that the property lines were adopted in 2007 without prior county approval, where following recordation of the deeds, the county preliminarily verified the adjustments as lawful and issued a final approval in 2017 when the property owner applied for, and the county approved, a development permit. This process, although partially post-hoc, is consistent with ORS 92.190(3). *Landwatch Lane County v. Lane County*, 77 Or LUBA 486 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Oregon Laws 2008, chapter 12, legislatively overruled the holding in *Phillips v. Polk County*, 53 Or LUBA 194, *aff'd*, 213 Or App 498, 162 P3d 338 (2007), which provided that it was unlawful to adjust property boundaries in a way that results in parcels that fail to comply with applicable minimum parcel sizes. Oregon Laws 2008, chapter 12, authorizes property line adjustments of substandard size lots and parcels, even if the resulting lots or parcels continue to fail to comply with applicable minimum parcel sizes. Oregon Laws 2008, chapter 12, section 6, made that legislation retroactive to "property line adjustments approved before, on or after the effective date of this 2008 Act." Therefore, Oregon Laws 2008, chapter 12, applies to a property line adjustment that took place in 2007, because the property line adjustment was "approved * * * before, on or after" the effective date of the 2008 Act. *Landwatch Lane County v. Lane County*, 77 Or LUBA 486 (2018).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 197.763 sets out a relatively structured process for conducting local government quasi-judicial land use proceedings. However, local governments frequently deviate slightly from those procedures and may do so provided the deviation from statutory procedures does not deny a party a substantial right the party is entitled to under the statute. *Grahn v. City of Yamhill*, 76 Or LUBA 258 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Under ORS 197.763(6)(a), prior to the close of the initial evidentiary hearing, a party is entitled to request an opportunity to submit additional evidence. If a party does so, a local government is obligated to either (1) continue the hearing or (2) leave the record open for at least seven days to allow "for additional written evidence, arguments or testimony[.]" But the right to submit additional testimony under ORS 197.763(6)(a) only exists until the close of the initial evidentiary hearing. After the close of the initial evidentiary hearing a local government may, but is not required to, grant a request for a continued hearing or open record period to submit additional evidence, and if it does so the local government is obligated to carry out the continued hearing in accordance with ORS 197.763(6)(b) or (c). *Grahn v. City of Yamhill*, 76 Or LUBA 258 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Any party may request an opportunity under ORS 197.763(6)(c) to respond to "additional written evidence" that was submitted during an open record period prior to the conclusion of the initial evidentiary hearing. But that response must be limited to responding to the "additional written evidence" that is submitted during the open record period. *Grahn v. City of Yamhill,* 76 Or LUBA 258 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a party's evidentiary response to "additional written evidence" that was submitted during the initial open record period at the conclusion of the initial evidentiary hearing pursuant to ORS 197.763(6)(c) includes additional evidence that goes beyond responding to that "additional written evidence" that was submitted during the initial open record period, a local government must either reject the additional evidence or give all parties an opportunity to rebut the additional evidence. *Grahn v. City of Yamhill,* 76 Or LUBA 258 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Subsection (1) of ORS 215.427 imposes either a 120-day or a 150-day deadline for a local government to take final action on a permit or zone change application. Subsection (2) of that statute gives a county 30 days to advise permit applicants who submit incomplete applications what is needed to make the application complete, and also sets out the three ways an application may be deemed complete. Subsection (3) of that statute freezes the approval standards, as of the date the application was first submitted, if the application is complete when submitted or rendered complete "within 180 days of the date the application was first submitted." Subsection (4) of that statute renders the application "void" on the one hundred and eighty-first day after the application was "first * * * submitted," if the applicant has not by that time complied with one of the submittal requirements set out in that subsection or subsection (2) to make the application complete. *Bora Architects, Inc. v. Tillamook County*, 76 Or LUBA 330 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The date a permit application was first submitted is important because new or modified permit criteria enacted after that date do not apply if the application was complete when submitted or is rendered complete in accordance with ORS 215.427(2). The date a permit application is first submitted is also important because on the one hundred and eighty-first day after it is submitted it becomes void if the applicant has been notified that additional information is needed to make the application complete and the applicant has not taken one of the three steps set out at ORS 215.427(4)(a) through (c). *Bora Architects, Inc. v. Tillamook County,* 76 Or LUBA 330 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A permit applicant initiates the permit approval process by advising the county what it seeks approval for and requesting that the county act to grant land use approval. ORS 215.427 clearly recognizes that when an application is first submitted it may be incomplete, and a permit application that does not include the required filing fee may be incomplete, but nevertheless be sufficient to initiate the permit approval process. *Bora Architects, Inc. v. Tillamook County,* 76 Or LUBA 330 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A permit application is not deemed complete under ORS 215.427(2) where the applicant never takes the position that the application was complete when submitted or deemed complete 30 days after it

was submitted because the county did not advise the applicant that additional information was needed within 30 days after the application was first submitted. That is particularly the case where the county belatedly advises the applicant of the information that is needed for a complete application and the applicant thereafter provides that additional information, after expiration of the 30-day period. *Bora Architects, Inc. v. Tillamook County*, 76 Or LUBA 330 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A county decision that approves a permit application that has become void under ORS 215.427(4) is "prohibited as a matter of law" and must be reversed. *Bora Architects, Inc. v. Tillamook County*, 76 Or LUBA 330 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 215.050 and 215.060 require the county governing body to approve revisions to the comprehensive plan and to conduct at least one hearing on proposed revisions. A county violates ORS 215.050 and 215.060, where on remand of an initial governing body decision approving plan amendments, the governing body delegates to a hearings officer final decision-making authority and the conduct of the only hearing, and on remand the hearings officer approves new comprehensive plan amendments that the governing body did not consider in the governing body's initial decision leading to the appeal to LUBA. *Setniker v. Polk County*, 75 Or LUBA 1 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A county governing body's consent agenda "ratification" of a hearings officer's decision approving comprehensive plan amendments is insufficient to comply with ORS 215.050 and 215.060, which require the county governing body to approve comprehensive plan amendments and to conduct at least one hearing on proposed amendments. *Setniker v. Polk County*, 75 Or LUBA 1 (2017).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a local government implements OAR 660-033-0120, Table 1, and OAR 660-033-0130(2)(c), by adopting land use regulations that expressly authorize the expansion of all of the "Parks/Public/Quasi-Public" uses listed in Table 1 except an ORS 197.770 existing firearms training facility in an EFU zone, the unmistakable conclusion is that the local government deliberately chose not to allow expansion of a firearms training facility in the EFU zone. *H.T. Rea Farming Corp. v. Umatilla County*, 71 Or LUBA 125 (2015).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a local government implements OAR 660-033-0130(2)(c) by adopting land use regulations that expressly authorize the expansion of a number of uses in the EFU zone, but did not amend its regulations to provide for expansion of an ORS 197.770 firearms training facility in the EFU zone, the local government must apply its EFU zone regulations as adopted, and cannot directly apply the administrative rule to approve the expansion of an ORS 197.770 firearms training facility that its EFU zone does not authorize. *H.T. Rea Farming Corp. v. Umatilla County*, 71 Or LUBA 125 (2015).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 197.772(3) is silent regarding what procedure should be followed when a property owner requests removal of a property from a Goal 5 inventory of historic resources, pursuant to the statute.

Because such removal constitutes a comprehensive plan amendment, the local government does not err in following the code procedures applicable for a comprehensive plan amendment, including local appeals to the governing body. *Lake Oswego Preservation Society v. City of Lake Oswego*, 70 Or LUBA 103 (2014).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 227.175(1), which authorizes cities to establish fees for processing permits at an amount no more than the actual or average cost of processing, is not violated by a pre-application requirement for an applicant to provide, at the applicant's expense, a peer-review analysis of impacts of a proposed major modification, and present that analysis at the required pre-application conference. *Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1 (2013).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 197.763(8) provides that a property owner's failure to receive notice required under ORS 197.763(2) will not "invalidate [the city's] proceedings" if the city can produce an affidavit that notice was given. ORS 197.763(8) does not say a city's affidavit is sufficient to establish that the city in fact sent the required notice, where there is a factual dispute over whether the city actually sent the required notice. *Aleali v. City of Sherwood*, 68 Or LUBA 153 (2013).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Whatever difference there may be between the word "consistent" in a local standard that requires conditional use permits to be consistent with the comprehensive plan and the word "comply" as used in ORS 197.175(2)(d), which requires that land use decisions be adopted in compliance with the comprehensive plan, land use decisions must comply with both requirements. *Friends of the Hood River Waterfront v. City of Hood River*, 67 Or LUBA 179 (2013).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a city consolidates three related applications pursuant to ORS 227.175(2), but suspends processing of two applications and proceeds to issue a decision approving the third application, absent language that defers its finality the decision on the third application is a final decision subject to LUBA's jurisdiction. Consolidation of applications under ORS 227.175(2) is at the request of the applicant, and nothing in the statute prevents a city, with the applicant's consent, making a final decision on one application while separately processing other applications, or renders an otherwise final decision non-final until the city completes separate processing of the other applications. *Save Downtown Canby v. City of Canby*, 67 Or LUBA 385 (2013).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Failure to make a staff report available during the entire minimum period required by ORS 197.763(4)(b) is not a basis for remand, where petitioners had the opportunity during the subsequent hearing to adequately respond to any issues raised or evidence presented in the staff report. *Poe v. City of Warrenton*, 66 Or LUBA 108 (2012).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 215.030, which provides that no more than two voting members of a county planning commission can be principally engaged in real estate sales or development, does not specify that a planning commission decision is invalid or subject to reversal or remand because the planning commission

membership violates the statute. ORS 215.030 is silent regarding the consequences and potential remedies for violation of the membership requirement. *O'Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where the decision before LUBA is a governing body decision based on the recommendation of a planning commission, that the planning commission membership may have violated the requirements of ORS 215.030 limiting the number of members principally engaged in real estate sales or development does not provide a basis to reverse or remand the governing body's decision. *O'Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Even if county code language could be interpreted to bar non-applicant parties who participated in the evidentiary phase of a local permit proceeding from participating in an on-the-record appeal filed by the applicant to challenge permit conditions of approval, such a local appeal procedure would violate ORS 197.763 and 215.422. *Families for a Quarry Free Neighborhood v. Lane County*, 64 Or LUBA 297 (2011).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. City council members are not required under ORS 227.180(3) to disclose receipt of an e-mail chain that was forwarded to them by one of the opponents to the application, where the substance of the e-mail chain was placed into the record and the only portion not placed in the record includes nothing related to any issue before the city council that could possibly be rebutted. *Bundy v. City of West Linn*, 63 Or LUBA 113 (2011).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Approval of a lot of record dwelling under the standards at ORS 215.705(1) constitutes the "discretionary approval of a proposed development of land" and is thus a "permit" decision subject to ORS 215.416, a conclusion made even clearer under ORS 215.417, which specifically describes dwellings provided under a number of statutes, including ORS 215.705(1), as permits approved under ORS 215.416. *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. 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).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A city decision to charge a subdivision applicant the actual cost of processing his subdivision application is not a land use decision that is subject to review by LUBA, where the city's final decision demanding payment of the actual costs was not made as part of its decision on the merits of the subdivision application and instead postdates that decision on the merits by over one year. The city's later decision to demand payment of the actual cost of processing the subdivision application is a

"fiscal" decision, and under the reasoning in *Housing Council v. City of Lake Oswego*, 48 Or App 525, 617 P2d 655 (1980), *rev dismissed*, 291 Or 878, 635 P2d 647 (1981), is not a land use decision subject to LUBA review. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 227.173(1) requires that "[a]pproval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance." A development code that permits the city engineer to waive or modify city street and roadway improvement standards where "in his/her judgment special circumstances dictate such change" is sufficient to comply with the ORS 227.173(1) requirement for "standards and criteria." *Zirker v. City of Bend*, 59 Or LUBA 1 (2009).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Approving or denying a tentative subdivision plat within an urban growth boundary is a limited land use decision and therefore not a "permit" decision. Because the ORS 227.175(10)(a) directive that local appeal issues not be limited to those issues identified in the notice of appeal only applies to permit decisions, that statute does not apply to decisions involving the approval or denial of subdivisions. *Frewing v. City of Tigard*, 59 Or LUBA 23 (2009).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Even when an applicant forfeits the right to process a subdivision application under the limited land use provisions of a local code and processes the application under the procedures for permits, the decision approving or denying the subdivision is still a limited land use decision and the provisions of ORS 227.175(10)(a) do not apply. *Frewing v. City of Tigard*, 59 Or LUBA 23 (2009).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. There is a difference between an application having enough information to allow staff to begin review and having enough information and evidence needed to demonstrate that all applicable approval criteria are met. It is not inconsistent with ORS 227.178 to determine that there is enough information for an application to be complete, but still allow the submittal of additional information to demonstrate compliance with applicable approval criteria. *Frewing v. City of Tigard*, 59 Or LUBA 23 (2009).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A petitioner fails to establish a basis for reversal or remand under ORS 227.186 (Measure 56 Notice) where the notice of hearing that the local government gave was given within the time required by ORS 227.186, that notice appears to substantially comply with ORS 227.186 and petitioner merely states it is not clear from the record that the statutorily required notice was given. *Home Builders Association v. City of Eugene*, 59 Or LUBA 116 (2009).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A street connectivity requirement that development street systems not create "excessive travel lengths" is sufficient to qualify as a standard or criterion, and therefore does not violate the ORS 227.173(1) requirement that permit decisions must "be based on standards and criteria." *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 197.610(1) and OAR 660-018-0020(1)(c) and (2) require that a local government provide the Department of Land Conservation and Development with a copy of the proposed text of any post acknowledgment comprehensive plan or land use regulation amendment. Where a local government's notice of its post acknowledgment action does not include the proposed text, remand is required. *SEIU v. City of Happy Valley*, 58 Or LUBA 261 (2009).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a party challenges a resolution adopting fees charged by the county for permits and appeals, the burden is on the county to include evidence in the record that demonstrates that the fees were set consistent with the statute's mandate that the fees that are subject to ORS 215.416(1) and ORS 215.422(1)(c) will not exceed average or actual costs of processing permits or appeals. *Sommer v. Josephine County*, 58 Or LUBA 505 (2009).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The ORS 203.045(3) general requirement that county ordinances be fully read in an open meeting on two days at least 13 days apart does not apply in cases where the ordinance is authorized by another statute. Although ORS 215.050(1) does not expressly require or authorize counties to adopt comprehensive plans by ordinance, the statute is properly interpreted to authorize counties to do so. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. OAR 660-018-0020 does not require that the Department of Land Conservation and Development be provided a redlined version of a post-acknowledgment comprehensive plan amendment. In addition, OAR 660-018-0020 does not provide that any failure on a local government's part to adequately identify the text to be repealed or adopted by a post-acknowledgment comprehensive plan amendment has the legal consequence of requiring that the post-acknowledgment comprehensive plan amendment be viewed as an entirely new comprehensive plan such that unamended portions of the comprehensive plan must be shown to comply with the statewide planning goals. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The ORS 203.045(3) general requirement that county ordinances be fully read in an open meeting on two days at least 13 days apart does not apply in cases where the ordinance is authorized by another statute. Although ORS 215.050(1) does not expressly require or authorize counties to adopt comprehensive plans by ordinance, the statute is properly interpreted to authorize counties to do so. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. 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).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. An ordinance that is deemed acknowledged under ORS 197.625 is not immune from an as-applied challenge based on an alleged inconsistency with state law. Acknowledgement under ORS 197.625 means only that the ordinance complies with statewide planning goals. *Porter v. Marion County*, 56 Or LUBA 635 (2008).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Even if an expert testifies that property is in a high landslide risk area, if the property is not located in a "further review area" as defined by OAR 632-007-0010(1) ORS 215.260(1)(b) does not require that DOGAMI review a geotechnical report on the property. *Boucot v. City of Corvallis*, 56 Or LUBA 662 (2008).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 215.427(2) merely provides that a local government may request additional information before proceeding with a permit or rezoning application if it believes such information is necessary. The statute does not mean that once a local government indicates the application is complete that necessarily means the application includes substantial evidence that all applicable criteria are satisfied. *Sperber v. Coos County*, 56 Or LUBA 763 (2008).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A local government errs in finding that an appeal of a denial of a sign permit involves only a "request for interpretation" rather than a "permit" to which the provisions of ORS 227.175(10) applied to require a *de novo* hearing that is not limited to issues raised by the appellant in an appeal statement. *Lamar Advertising Company v. City of Eugene*, 54 Or LUBA 295 (2007).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A hearings officer errs in declining to review proposed flight instruction, scenic tours and forest patrol uses as "new uses" rather than "existing uses" under the Aviation Protection Act, ORS 836.608, and in requiring the applicant to submit a new application requesting approval for those "new uses," where the initial application sought approval of those uses under criteria that apply to new uses, county staff understood that the applicant sought approval as new uses and not existing uses, and the applicant requested that the hearings officer evaluate those uses as new uses if they did not qualify as existing uses. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

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

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A decision that merely relocates or eliminates a common property line between abutting properties is not a "permit" decision as that term is defined in ORS 227.160(2) and 215.402(4), even if the decision involves the exercise of discretion. *South v. City of Portland*, 53 Or LUBA 362 (2007).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A decision that relocates or eliminates a common boundary between two properties does not involve the "proposed development of land" and thus is not a "permit" as that term is defined in ORS 227.160(2) and 215.402(4). The statutory requirements for notice and hearing that govern "permit" decisions do not apply to a property line adjustment decision. *South v. City of Portland*, 53 Or LUBA 362 (2007).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Absent some explanation for why a building permit decision that modifies a condition of partition approval involves the kind and degree of discretion that distinguishes a statutory "permit" as that term is defined at ORS 215.402(4) from other kinds of permits, LUBA will not presume that challenged permit is an ORS 215.402(4) permit. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

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

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A resolution that adopts a fee schedule is not a zoning ordinance, land division ordinance or similar ordinance, and is therefore not a "land use regulation," the adoption of which requires compliance with the procedural requirements of ORS 197.610 to 197.615. *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 227.178 and 227.179 envision three routes to final action on a permit application: (1) a final local government decision within 120 days; (2) a final local government decision in more than 120 days followed by a refund of one-half of the application fee; or (3) a failure to issue a final decision within 120 days followed by a petition for a writ of mandamus to compel the local government to approve the permit or demonstrate to the circuit court that approval of the permit would violate a substantive provision of its comprehensive plan or land use regulations. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 697 (2005).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. If a city or county adopts a "spurious, bad faith" denial of a "permit, limited land use decision or zone change application" under ORS 215.427 or 227.178 for the purpose of avoiding one of the statutory consequences for failing to take timely action on an application, such a decision constitutes an "action * * * for the purpose of avoiding the requirements of ORS 215.427 or 227.178," within the meaning of ORS 197.835(10)(b)(B). *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 697 (2005).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A provision in a local subarea plan allowing submittal of master plan application without the consent of all owners

of property subject to the application does not violate ORS 227.175(1). *Lowery v. City of Keizer*, 48 Or LUBA 568 (2005).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A zoning code amendment that purports to legalize lots or parcels that were created by deed or land sales contract in violation of the applicable local criteria at the time of creation is inconsistent with ORS 92.010 and ORS 215.010(1). *Stevens v. Jackson County*, 47 Or LUBA 381 (2004).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Oregon Laws 1993, chapter 590, section 6, allows counties to avoid implementing statutory changes to the destination resort requirements until no later than their next periodic review. Even if a county has not concluded its next periodic review, it cannot substantially amend its pre-1993 destination resort regulations without implementing those changes. *Stevens v. Jackson County*, 47 Or LUBA 381 (2004).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A use determination adopted pursuant to ORS 227.160(2)(b) may include a description of the procedures the city anticipates will be used to consider an application for that use. *Boly v. City of Portland*, 46 Or LUBA 197 (2004).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. An ordinance that allows an up-or-down vote by the county electorate on permit approval decisions is incompatible with, and therefore preempted by, ORS 215.402, which requires that approval or denial of permit applications be governed by standards and criteria set forth in the county's code and findings explaining why the proposal complies or fails to comply with those standards. *Sievers v. Hood River County*, 46 Or LUBA 635 (2004).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A building permit may also constitute a statutory "permit" as defined by ORS 227.160 or 215.402, and thus require a local government to provide notice and opportunity for hearing before taking action on that permit, where approval or denial of the permit requires a discretionary determination regarding whether the proposed use is allowed or not allowed under applicable land use regulations. *Frymark v. Tillamook County*, 45 Or LUBA 486 (2003).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Under ORS 227.178(2), even if a city believes that an application is incomplete or it needs more information to render a decision, the city must conduct a hearing and render a decision based on the information submitted, if the applicant insists. *Wiper v. City of Eugene*, 44 Or LUBA 127 (2003).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. It is inconsistent with the statutory scheme for processing permit applications at ORS 227.160 *et seq.* for city planning staff to reject a permit application because staff believes more information is necessary or because staff believes additional or different applications are necessary for approval. *Wiper v. City of Eugene*, 44 Or LUBA 127 (2003).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. While a city may deny a permit application if the applicant fails to submit information that is necessary for approval, under ORS 227.175 that decision must be made by a hearings officer or proper designate, after a hearing or other procedure that affords the applicant and others to present evidence and argument. Under the statute, planning staff may not effectively prejudge the merits of the application by rejecting an application that staff feels cannot be approved in the form submitted. *Wiper v. City of Eugene*, 44 Or LUBA 127 (2003).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A local government quasi-judicial land use decision maker is not legally required to verbally explain how all legal and evidentiary issues are resolved. It is the written decision that the decision maker ultimately adopts that is subject to LUBA's review on appeal. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a local government departs from the procedures for continuing a hearing set out in ORS 197.763(6)(a) to (c), the revised procedures must be clearly communicated to all parties and, preferably, reduced to writing. *Hawman v. Umatilla County*, 42 Or LUBA 223 (2002).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where the circumstances under which oral testimony would be allowed at a continued hearing are not clearly defined, and petitioners allege that they were prejudiced by being denied an opportunity to present oral testimony at the continued hearing based on the ambiguity of the procedures, remand is appropriate to ensure that petitioners receive an opportunity to present that oral testimony. *Hawman v. Umatilla County*, 42 Or LUBA 223 (2002).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A decision maker does not violate ORS 244.040(1)(a), which prohibits an elected official from using his or her official position to obtain a personal financial gain or avoid a financial detriment, where the decision maker is a member of a church congregation, the church is an applicant for a land use permit that is appealed to LUBA, and the decision maker joins in a request for a voluntary remand of the decision, in part to avoid the legal fees involved in defending the appeal. *Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137 (2002).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Approval of a building permit for a use that is unquestionably a permitted use in the applicable zone is not a "permit" as defined in ORS 227.160(2)(a) simply because, in issuing the permit, the local government interprets an ambiguous term in a land use regulation that applies to that permitted use. An interpretation of such a regulation in such circumstances is not the type of "discretionary approval" that results in a "permit" under ORS 227.160(2)(a). *Tirumali v. City of Portland*, 41 Or LUBA 231 (2002).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A hearings officer's order that leaves the record open for seven weeks after a public hearing to allow the applicant to submit additional evidence and also allows opponents seven additional days to respond to any new evidence submitted by the applicant during that seven weeks provides the rights

guaranteed by ORS 197.763(6)(c) even though the order does not precisely mirror the statute. *Norway Development v. Clackamas County*, 40 Or LUBA 276 (2001).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A city cannot rely on the existence of its urban growth boundary to provide the "annexation plan" required by *Skourtes v. City of Tigard*, 250 Or 537, 444 P2d 22 (1968), and ORS 222.175 as necessary for informed consent to annexation. *Johnson v. City of La Grande*, 39 Or LUBA 377 (2001).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 227.175(2) requires that a city provide the opportunity for a consolidated permit application and review process; the statute does not require that each ordinance that adopts a new land use permitting process must separately set out provisions for such consolidated review. *Rest-Haven Memorial Park v. City of Eugene*, 39 Or LUBA 282 (2001).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A Land Use Compatibility Statement requirement that a proposal to apply process water from a fruit processing operation to EFU-zoned land must "comply with all applicable local land use requirements" requires at a minimum that the county determine whether the proposal is a farm use and whether it is a utility facility. These determinations require the exercise of sufficient discretion that the county's decision is both a "land use decision" and a "permit," as those terms are defined by statute. *Farrell v. Jackson County*, 39 Or LUBA 149 (2000).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 368.361(4) requires a county to apply vacation procedures applicable to counties, even if the property to be vacated is inside a city. Even when a county applies city ordinances governing road vacations, it is not required to obtain the consent of all abutting property owners as would be required by the vacation procedures which are only applicable to cities. *Oregon Shores Cons. Coalition v. Lincoln County*, 38 Or LUBA 699 (2000).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Even assuming ORS 467.136 allows local regulation of shooting ranges in certain situations, the statute preempts regulation of "normal and accepted activity" on shooting ranges. *City of Sherwood v. Washington County*, 38 Or LUBA 656 (2000).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. "Normal and accepted activity" on a shooting range refers to the activity itself, rather than the noise generated by the activity. Because target shooting is a normal and accepted shooting range activity, ORS 467.136 prohibits local governments from adopting or enforcing regulations that make such activity a nuisance or trespass, no matter how noisy the target shooting may be. *City of Sherwood v. Washington County*, 38 Or LUBA 656 (2000).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 215.416(2) does not obligate a county to follow a consolidated procedure in considering a request for a local land use approval. Rather, the statute provides that if an applicant chooses to submit a consolidated application, the county must have a procedure available to review the consolidated application as a whole. *McKenney v. Deschutes County*, 37 Or LUBA 685 (2000).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The ORS 92.285 prohibition against adopting retroactive ordinances includes ordinances that allow retroactive application. *Church v. Grant County*, 37 Or LUBA 646 (2000).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. An ordinance allowing a county to revoke otherwise final and unreviewable partition approvals is a "retroactive ordinance" within the meaning of ORS 92.285. *Church v. Grant County*, 37 Or LUBA 646 (2000).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where LUBA rejects as a matter of law a county's erroneous interpretation of its comprehensive plan as imposing a 2.3-acre minimum residential density, procedural errors the county may have committed in considering evidence outside the record in reaching that erroneous interpretation provide no additional basis for remand. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A 3,500-square-foot memorial garden including nine-foot-high granite walls, landscaping and walkways causes a "material change in the use or appearance of land" and is thus "development" for purposes of determining whether approval of the proposed memorial is a permit as defined at ORS 227.160(2). *Carlsen v. City of Portland*, 36 Or LUBA 614 (1999).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A city errs in accepting new evidence from the applicant as part of the applicant's final written argument under ORS 197.763(6)(e), without offering other parties an opportunity to respond to that new evidence. *Brome v. City of Corvallis*, 36 Or LUBA 225 (1999).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. That a local government might in future quasi-judicial proceedings recognize that the procedures required by its amended zoning ordinance conflict with the procedures required by ORS 215.416(11) for permit decisions, and therefore follow the procedures required by the statute, does not make the procedures required by the amended zoning ordinance consistent with the statute and does not make a LUBA appeal challenging the zoning ordinance amendment premature. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 215.130(2) authorizes a city to process and approve a zone change contingent on future annexation to the city. *Lodge v. City of West Linn*, 35 Or LUBA 42 (1998).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The permissive terms of ORS 215.750 do not prohibit a local government from adding forest template dwelling criteria that are more restrictive than statutory standards. *Yontz v. Multnomah County*, 34 Or LUBA 367 (1998).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A local government is not obligated by ORS 215.750(1) to allow the establishment of nonforest dwellings.

If a local government chooses to allow nonforest dwellings, it is not obligated to allow nonforest dwellings under the alternative template test specified at ORS 215.750(5). *Yontz v. Multnomah County,* 34 Or LUBA 367 (1998).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 92.175 does not abrogate the requirement of ORS 92.014 that no instrument dedicating land for public use may be recorded without the prior approval of the city or county authorized to accept the dedication. *Petersen v. Yamhill County,* 33 Or LUBA 584 (1997).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 197.646 does not preclude a local government from imposing a regulation that is more restrictive than what is required by ORS 215.750 before that regulation is reviewed by DLCD. *Evans v. Multnomah County,* 33 Or LUBA 555 (1997).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Under ORS 227.215, the definition of "development" is sufficiently broad to encompass the removal of a tree for landscaping purposes, and a local government may regulate tree removal through the issuance of development permits. *Lindstedt v. City of Cannon Beach*, 33 Or LUBA 516 (1997).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a city's motion to supplement the record with notice of adoption of ordinance will not supplement or complete the challenged decision in any way that is challenged by petitioner, the motion will be denied due to its lack of bearing on the merits of the appeal. *Western PCS, Inc. v. City of Lake Oswego*, 33 Or LUBA 369 (1997).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. In adopting land use regulations, including emergency and temporary land use regulations, a city is bound by the substantive and procedural requirements established by ORS 197.610 and Statewide Planning Goals 1 and 2. These statutory and Goal requirements must be followed notwithstanding contrary city charter provisions. *Western PCS, Inc. v. City of Lake Oswego*, 33 Or LUBA 369 (1997).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The city's failure to comply with ORS 197.610(1) in not submitting proposed comprehensive plan amendments to LCDC or DLCD is a substantive error that requires remand. *Concerned Citizens v. Jackson County,* 33 Or LUBA 70 (1997).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A county was not required to apply the Statewide Planning Goals to minor partitions approved prior to LCDC acknowledgment of the county's comprehensive plan if the county did not regulate minor partitions under its subdivision ordinance. *Joseph v. Baker County,* 33 Or LUBA 38 (1997).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The public meetings law, ORS 192.610 to 192.690, and a local ordinance that requires all evidence, deliberation, and decisions to be made before the public and on the record, do not prohibit the board of county commissioners from having an off-the-record consultation with legal counsel during the course of a public hearing. *Collins v. Klamath County*, 32 Or LUBA 338 (1997).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. In making a zoning classification determination, the city properly relied on the definition and review procedures set forth in ORS 227.160(2) and ORS 227.175(11), and was not required to follow the local procedural requirements for a Type I review. *North Portland Citizens v. City of Portland*, 32 Or LUBA 70 (1996).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 215.431(1) and (2) allow delegation by a county governing body to the county planning commission or hearings officer of the authority to conduct hearings and make decisions on applications for plan amendments, subject to appeal to the county governing body. However, under ORS 215.413(5)(a), ORS 215.431(1) and (2) do not apply to any plan amendment for which an exception to any of the Statewide Planning Goals is required. *Young v. Douglas County*, 31 Or LUBA 545 (1996).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Statute authorizing counties to establish local appeal fees and setting standards for the amount of fees does not require the county to evaluate each appeal to determine whether an appeal fee established by ordinance meets the statutory standard. ORS 215.422(1)(c). *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A local government violates a substantial right when it charges more than the maximum appeal fee allowed by ORS 227.175(10)(b) for a hearing requested under ORS 227.175(10)(a). *Gensman v. City of Tigard*, 29 Or LUBA 505 (1995).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. If a local government chooses to treat an application as one for a land use decision, rather than a limited land use decision, and a local appeal as one under ORS 227.175(10)(a), it may not charge more than the maximum appeal fee allowed by ORS 227.175(10)(b). *Gensman v. City of Tigard*, 29 Or LUBA 505 (1995).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Determining whether an advisory body, which submitted a recommendation to the local decision maker in a land use proceeding, violated provisions of the Public Meetings Law in the manner its meetings were held is beyond LUBA's scope of review. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Absent a local regulation to the contrary, where documents supporting a land use application are available for review in the local government planning office, a local government is not required to give copies of such documents to individuals free of charge. *Bates v. Josephine County*, 28 Or LUBA 21 (1994).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where comprehensive plan and zoning map amendments simply change the designation and zone of a

county park to ones that allow parks as a conditional use, the amendments are not inherently inconsistent with an existing dedication of the subject property for public use as a park. Therefore, that the amendments may not comply with statutory requirements for vacation of such a dedication provides no basis for reversal or remand. *Sahagian v. Columbia County*, 27 Or LUBA 592 (1994).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. An annexation of contiguous property with the written consent of the property owners, pursuant to ORS 222.125, is subject to the requirement of ORS 197.175(1) that the annexation be determined to be consistent with applicable land use requirements, and the recognized procedural requirements for such quasi-judicial land use decision making. *Roloff v. City of Milton-Freewater*, 27 Or LUBA 80 (1994).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. There is no prohibition against decision makers consulting with staff during quasi-judicial land use proceedings and no requirement that such consultation occur in the presence of other parties. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Absent some legal requirement to the contrary, a local government is not bound to assure that its final written decision conforms to its oral decision in all particulars. *Louisiana Pacific v. Umatilla County*, 26 Or LUBA 247 (1993).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The exclusive forum for enforcement of public meetings laws is circuit court. That public meetings law violations may have occurred during the land use decision making process does not, of itself, provide a basis for reversal or remand. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Local regulations govern the determination of *when* a local government decision is final for purposes of LUBA review, so long as the local regulations do not conflict with applicable statutes or LUBA's rules. *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 215.283 establishes standards directly applicable to county land use decisions concerning nonfarm uses of EFU-zoned land. Regardless of whether a county adopts an exception to Goal 3 for EFU-zoned land, it cannot allow a nonfarm use not listed under ORS 215.283 on such land without changing the zone. *Schrock Farms, Inc. v. Linn County*, 25 Or LUBA 187 (1993).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 197.279(2) establishes the procedures required for adoption of a wetland conservation plan. A local government's failure to adopt a wetland conservation plan, provides no basis for reversal or remand of a challenged decision, because local governments are not required to adopt such plans. *Clarke v. City of Hillsboro*, 25 Or LUBA 195 (1993).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Under ORS 517.780(1), where a county surface mining ordinance in effect on July 1, 1972 has been amended, but not repealed, the county's surface mining ordinance and amendments thereto are not subject

to the fee limitations established by ORS 517.780(4) and 517.800. *Oregon City Leasing, Inc. v. Columbia County*, 25 Or LUBA 129 (1993).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where a settlement agreement in a lawsuit previously filed by intervenor against a county simply says the county will consider a rezoning application for intervenor's property, as it is required to do under ORS 215.416(2) in any case, the settlement agreement is irrelevant to an application for a replacement dwelling on the subject property, and does not establish bias or prejudgment by the county decision maker. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A local ordinance which prohibits the short term rental use of dwellings in residential zones is not an unlawful rent control regulation under ORS 91.225. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where intervenors filed a conditional use permit application as an agent of the property owner, there is no violation of the provision in ORS 215.416(1) stating that an owner of property may apply for a permit. *Silani v. Klamath County*, 22 Or LUBA 735 (1992).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A board of county commissioners need not provide parties an opportunity to rebut a memorandum in which the county counsel provides legal advice concerning a pending local land use appeal. Such communications are not *ex parte* contacts. ORS 215.422(4). *Toth v. Curry County*, 22 Or LUBA 488 (1991).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A local governing body is required by ORS 197.175(2)(d) to apply applicable provisions of its comprehensive plan and land use regulations in determining whether a wrecking certificate should be approved, notwithstanding that it has not adopted regulations as authorized by ORS 822.140(3). *Bradbury v. City of Independence*, 22 Or LUBA 398 (1991).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. In the absence of a local or other regulation making provisions of ORS chapter 468, pertaining to pollution control, applicable to an application for a wrecking certificate as independent approval standards, that statute does not govern local approval of a wrecking certificate. *Bradbury v. City of Independence*, 22 Or LUBA 398 (1991).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. ORS 215.431 does not apply to designated forestlands and, therefore, comprehensive plan amendments concerning such forestlands must be adopted by the county governing body. *Wickwire v. Clackamas County*, 21 Or LUBA 278 (1991).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Although a decision rendered in violation of statutory public meeting law requirements may be voided, the

circuit court for the county in which the governing body ordinarily meets has jurisdiction, not LUBA. ORS 192.680. *Strawn v. City of Albany*, 21 Or LUBA 172 (1991).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A zoning clearance approval which requires determinations on whether a proposed use is incidental and subordinate to an existing use, and whether and the extent to which an existing use is a lawful nonconforming use, requires interpretation and the exercise of judgment within the meaning of ORS 197.015(10)(b)(A) and (C) and, therefore, is a "permit" under ORS 215.402(4). *Komning v. Grant County*, 20 Or LUBA 481 (1990).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. The written notice of a decision on a permit application required by ORS 227.173(3) is written notice of the local government's final decision. *Harvard Medical Park, Ltd. v. City of Roseburg*, 19 Or LUBA 555 (1990).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. While a decision to approve a zone change does not approve a "permit," within the meaning of ORS 227.160(2), a decision which approves both a variance and a minor partition does approve a "permit." *Harvard Medical Park, Ltd. v. City of Roseburg*, 19 Or LUBA 555 (1990).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Use of a process, established by county plan and ordinance provisions, which allows a county to refine its mapping of areas where destination resorts are permitted, with regard to prime farmland, through determination of compliance with the statutory and goal siting criteria on a case-by-case basis, is not precluded by the destination resort statute. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).