

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. When a county is evaluating an application for housing, including needed housing, ORS 197.307(4) (2017) prohibits the county from applying any standards, conditions and procedures that are not clear and objective to the application to develop a residential project, without regard to whether applicant’s property is “buildable land” within the meaning of ORS 197.295(1). *Warren v. Washington County*, 78 Or LUBA 375 (2018).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A limited land use decision may be approved through a notice and comment process, and a local government may provide a right of local appeal. ORS 197.195(5). In such an appeal, the appeal hearing may be based on the existing administrative record or new evidence may be allowed. Should an appeal hearing allow the introduction of new evidence, the hearing is subject to the quasi-judicial hearing procedures set forth in ORS 197.763. In such a situation, a hearings officer may properly consider new evidence and analysis offered by the local government, as well as a petitioner’s response, and LUBA’s review includes the hearings officer’s consideration of that evidence and those issues. *Hill v. City of Portland*, 77 Or LUBA 317 (2018).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. LUBA will reject an argument that because a city’s discretionary site review standards apply to proposed development, the city’s approval is thus a “permit” as defined at ORS 227.160(2) (discretionary approval of the development of land), where even if the city’s site review standards apply, the result would be a limited land use decision as defined at ORS 197.015(12), which is excluded from the ORS 227.160(2) definition of permit. *McCullough v. City of Eugene*, 74 Or LUBA 573 (2016).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A decision that approves an application for site plan and design review within a city falls squarely within the definition of “limited land use decision” at ORS 197.015(12)(a)(B), and the fact that the city applied the procedural protections of ORS 197.763 to the hearings on the applications does not convert the challenged decision into something other than a limited land use decision. *Truth in Site Coalition v. City of Bend*, 71 Or LUBA 348 (2015).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A decision to “incorporate” comprehensive plan policies into a local government’s land use regulations, to make those policies criteria directly applicable to a limited land use decision, must be accomplished by as post-acknowledgment plan amendment that expressly makes specific policies applicable approval criteria for limited land use decisions. The mere adoption of land use regulations to implement comprehensive policies does not “incorporate” such policies into land use regulations as directly applicable criteria. *SCAN v. City of Salem*, 70 Or LUBA 468 (2014).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. 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).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. 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).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. If a decision falls within the ORS 197.015(13) definition of “limited land use decision,” a local government must ensure that the minimum procedures required by ORS 197.195 are observed. *Zirker v. City of Bend*, 55 Or LUBA 188 (2007).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A decision that denies an application based on a determination that the proposed use is not permitted and is not processed under a procedure to make limited land use decisions is not a “limited land use decision” under ORS 197.015(13). *Lamar Advertising Company v. City of Eugene*, 54 Or LUBA 295 (2007).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. The fact that procedures for making limited land use decisions are used for making a decision to approve or deny a final partition plat does not convert that decision into a limited land use decision or override the language of ORS 92.100(7) providing that decisions to approve or deny a final partition plat are not limited land use decisions. *Ehle v. City of Salem*, 54 Or LUBA 688 (2007).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Local governments that intend to use statutory procedures for limited land use decisions must make an initial effort to identify in their plan or land use regulations which kinds of uses they view as qualifying for approval as a limited land use decision. *Papst v. Clackamas County*, 53 Or LUBA 344 (2007).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. In making limited land use decisions, it is error for local governments to consider evidence submitted after the close of the comment period. By requesting and accepting a mini traffic study from the applicant that the decision maker relied upon after the close of the comment period, without giving petitioners an opportunity to review and respond to the study, the local government violates petitioners’ substantial rights. *Delk v. City of Salem*, 51 Or LUBA 123 (2006).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Failure to provide notice of withdrawal of a permit application required by local ordinance is not a failure to provide the “notice of decision” required by the statutes governing limited land use decisions at ORS 197.195, for purposes of the statute of ultimate repose at ORS 197.830(6), where it is undisputed that the subject property is not within an urban growth boundary and for that reason alone a decision with respect to the application cannot be a limited land use decision. *Kamp v. Washington County*, 51 Or LUBA 670 (2006).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. In making limited land use decisions, local governments may not consider evidence submitted after the close of the comment period, no matter the source of the new evidence. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. When new evidence is submitted after the close of the comment period during limited land use proceedings, as with land use decisions, the local government must either (1) reopen the record to allow participants an opportunity to respond to the new evidence or (2) reject the new evidence as untimely. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. In order to “incorporate” a comprehensive plan standard into a local government’s land use regulations within the meaning of ORS 197.195(1) and thus apply that plan standard to a limited land use decision as an approval criterion, the local government must at least amend its land use regulation to identify specific plan policies or provisions that apply to a limited land use decision as approval criteria. A code requirement to “comply with the comprehensive plan” is insufficient to incorporate any comprehensive plan standard under ORS 197.195(1). *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Where a challenged decision approving a subdivision does not purport to adopt a zone change, grant a variance or grant conditional use approval, the county’s failure to grant such approvals, even if required, does not convert the decision from a “limited land use decision” into a “land use decision.” *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A local government cannot assign review of an application for a limited land use decision to two separate review bodies, without ensuring that the proceedings before both review bodies comply with statutory procedures for limited land use decisions, including notice to property owners within 100 feet of the subject property. *McCulloh v. City of Jacksonville*, 46 Or LUBA 462 (2004).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Goals 9 and 10 do not prohibit increases in regulatory burdens or require local governments to refrain from imposing any particular level of regulatory burden. Therefore, incorporation of comprehensive plan policies into the zoning code pursuant to ORS 197.195, in order to apply those policies as approval criteria to limited land use decisions, does not violate Goals 9 and 10 even if application of such policies as approval criteria would impose additional regulatory burdens on development of Goal 9 and 10 lands. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370 (2002).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Whatever prejudice to petitioners’ substantial rights might have occurred before the initial decision maker, when the city arguably failed to provide petitioners an adequate opportunity

to comment before the planning commission on whether a proposed design complied with applicable criteria, was cured by providing petitioners an opportunity to present testimony directed at applicable criteria in a subsequent appeal to the city council. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. 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).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A local government violates ORS 197.195(3)(c) if it accepts evidence into the record after the statutory period for comments has run, even if the opposing party was generally aware of the issues discussed in the evidence and did not raise arguments regarding those issues below. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Where the notice provided by the city does not indicate that an application will be processed as a limited land use decision, and the application is in fact processed as a quasi-judicial land use decision under the provisions of ORS 197.763, the city will be required to provide all of the procedural safeguards required for land use decisions. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. When the city closed the comment period required by ORS 197.195(3)(c)(A) prior to making a limited land use decision, but continued to accept new evidence from the applicant over a six-month period, the city violated ORS 197.195(3)(c)(F), which requires that all evidence relied upon by the applicant be available for review during the comment period. *Azevedo v. City of Albany*, 29 Or LUBA 516 (1995).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. When the city zoning ordinance makes final approval of a tentative subdivision plan a limited land use decision appealable to LUBA, a decision applying the ordinance is not a “tentative decision” that can be appealed locally at a hearing pursuant to ORS 227.175(10). *Azevedo v. City of Albany*, 29 Or LUBA 516 (1995).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. 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).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A local government that intends to process limited land use decisions differently from land use decisions must, under ORS 197.195(2)(c)(I), either make that intent clear in the initial

notice or provide all of the ORS 197.763 procedural safeguards. *Gensman v. City of Tigard*, 29 Or LUBA 505 (1995).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. ORS 197.195(3)(c)(B) does not require an applicant, at risk of waiver, to comment in writing on conditions a local government imposes as part of approval, since the application itself states what the applicant will accept without objection. *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. OAR 661-10-021, which allows a local government to withdraw a limited land use decision for reconsideration, does not impose an obligation on the parties to make or waive additional objections after the 14-day period for comment allowed under ORS 197.195(3)(c)(A). *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Where petitioners do not argue the challenged decision violates any criterion which they failed to raise below because that criterion was not listed in the local government’s notice of initial hearing or proposed action, as required by ORS 197.763(3)(b) or ORS 197.195(3)(c)(C), petitioners fail to show their substantial rights were prejudiced by the error and establish no basis for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Where a local government provides public hearings before the planning commission and city council before making a limited land use decision, petitioner’s allegations that the notice preceding the city council hearing fails to comply the requirements of ORS 197.195(3)(b) for notice of the application provide no basis for reversal or remand where petitioner fails to challenge the adequacy of the notice of hearing that preceded the planning commission hearing. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. LUBA’s review of limited land use decisions is limited to issues raised before the local government, unless (1) the local government did not satisfy the procedural requirements of ORS 197.195, or (2) the limited land use decision adopted differs significantly from the proposal described in the local notice of proposed action. *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A statement that a list of applicable criteria will be available at City Hall seven days prior to the hearing does not satisfy the requirements of ORS 197.195(3)(b) that the notice of proposed action list the applicable criteria. *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Under ORS 197.830(10) and 197.835(2), LUBA’s review of both land use decisions and limited land use decisions is limited to issues raised below, unless (1) the local government did not satisfy the procedural requirements of ORS 197.763 or ORS 197.195, or (2) the land use

decision or limited land use decision adopted differs significantly from what was described in the local government's notice. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Where the relevant local government notices did not list the applicable approval criteria, as required by both ORS 197.763(3)(b) and 197.195(3)(c)(C), then regardless of whether the challenged decision is a land use decision or limited land use decision, issues may be raised before LUBA irrespective of whether they were raised during the proceedings below. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A local government wishing to identify in its plan or land use regulations uses qualifying for approval as limited land use decisions under ORS 197.015(12)(b) must make it clear the discretionary approval standards applied to such uses may only be applied to regulate the use's physical characteristics and may not be used to deny approval of the use altogether. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. The ORS 197.195(3)(c)(B) provision that only issues raised “with sufficient specificity” below may be raised before LUBA in an appeal of a limited land use decision requires only that an issue be raised sufficiently to afford the local government and other parties an opportunity to respond. *Barrick v. City of Salem*, 27 Or LUBA 417 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. A city's failure to incorporate comprehensive plan provisions applicable to limited land use decisions into its land use regulations, as required by ORS 197.195(1), means only that applicable plan provisions continue to apply to limited land use decisions. It has no bearing on whether a development proposal meets the ORS 197.015(12) definition of “limited land use decision.” *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Where the applicability of certain comprehensive plan policies was debated during the local proceedings, and petitioners had opportunities to and did present argument concerning these policies, the local government's failure to list the policies as applicable approval standards, as required by ORS 197.195(3)(c)(C), is harmless and provides no basis for reversal or remand. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. ORS 197.195, which establishes minimum procedural requirements for making limited land use decisions, does not require that local governments provide either a public hearing or a local appeal. ORS 227.175(3) and (10) do not apply to limited land use decisions, because they are not “permits,” as defined in ORS 227.160(2). *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. The 21-day period provided by ORS 197.830(8) for appealing a limited land use decision to LUBA does not begin to run until a petitioner has been given the explanation of appeal rights to which it is entitled under ORS 197.195(3)(c)(H). *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

25.3.10 Local Government Procedures – Compliance with Statutes – Limited Land Use Decisions. Under ORS 227.178(3), the quasi-judicial land use decision-making procedures of ORS 197.763 apply to an urban subdivision decision, where the subdivision application was submitted after ORS 197.763 became effective, but before the effective date of legislation exempting limited land use decisions from the requirements of ORS 197.763. *Warren v. City of Aurora*, 25 Or LUBA 11 (1993).