

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Pursuant to ORS 197.835(2), LUBA may make its own factual findings as to whether an appeal was timely filed, which is a jurisdictional question. Accordingly, LUBA may consider evidence outside the record for the limited purpose of resolving disputes regarding whether an appeal was timely filed, even in the absence of a motion to take evidence outside the record under OAR 661-010-0045. *Leyden v. City of Eugene*, 79 Or LUBA 151 (2019).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A zone verification is subject to LUBA’s jurisdiction and a person adversely affected by the decision may appeal the decision to LUBA “[w]ithin 21 days of the date a person knew or should have known of the decision where no notice is required.” ORS 197.830(5)(b). The city was not obligated to and did not provide notice of the zone verification decision to petitioner. Petitioner was put on inquiry notice of the zone verification decision when the city provided petitioner multiple notices of a subsequent land use application, review, and approval for site review, traffic impact analysis, and adjustment review for the same subject property and development described in the zone verification decision. The city invited petitioner to participate in that subsequent land use action and to review public planning documents at the planning division and online. The appeal was untimely filed and must be dismissed because petitioner failed to make such inquiries and the 21-day appeal period expired before petitioner filed the appeal. *Leyden v. City of Eugene*, 79 Or LUBA 151 (2019).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(3) operates to potentially allow a petitioner a delayed period of time to file a LUBA appeal, but it is not a source of procedural requirements that a local government approved development that differs from the development described in the notice of hearing is not procedural error. *Elenes v. Deschutes County*, 78 Or LUBA 483 (2018).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where petitioners’ counsel attempts to amend a timely filed Notice of Intent to Appeal (NITA), to add additional petitioners who were mistakenly omitted from the original NITA, but the amended NITA is filed after the time limit set forth in ORS 197.830(9) for filing a NITA before LUBA, petitioners’ mistaken omission of the petitioners from the original NITA was not merely a “technical violation” of LUBA’s rules at OAR 660-010-0015. The additional petitioners listed in the Amended NITA have not established that their NITA was filed within the time limit set forth in ORS 197.830(9), and are therefore not parties to the appeal. *Cossins v. Josephine County*, 77 Or LUBA 240 (2018).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. OAR 661-010-0010(3) provides that an appealed decision becomes “final” when it is reduced to writing and signed by the final decision maker(s), “unless a local rule or ordinance specifies that the decision becomes final at a later date.” Where the county code provides that a decision shall not become “final” until the decision is signed by the final decision makers, “and mailed as required by Article 33,” and no provision of Article 33 actually requires mailing of the decision, the decision became “final” on the date that it was reduced to writing and signed. *Terrell v. Josephine County*, 77 Or LUBA 470 (2018).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. At one time the 21-day deadline for filing a notice of intent to appeal a statutory permit decision did not begin to run until notice of that decision was mailed to a party who was entitled to mailed notice of the decision. However, *Wicks-Snodgrass v. City of Reedsport*, 148 Or App 217, 939 P2d 625 (1997), overruled the Court of Appeals decision that established that rule, and now under OAR 661-010-0010(3) that deadline begins to run when the is reduced to writing and signed and become final, “unless a local rule or ordinance specifies that the decision becomes final at a later date * * *.” *McGrew v. Yamhill County*, 75 Or LUBA 247 (2017).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. In *Aleali v. City of Sherwood*, 262 Or App 59, 325 P3d 747 (2014), the Court of Appeals held that the “local government makes a land use decision without providing a hearing” prong of ORS 197.830(3), which suspends the 21-day deadline for filing a notice of intent to appeal until a petitioner receives actual notice of the decision, includes (1) cases where a local government held no hearing at all, and also (2) cases where the local government held a hearing but failed to provide the petitioner a notice of hearing that the petitioner was entitled to under state (as opposed to local) law. *Phillips v. City of Corvallis*, 75 Or LUBA 315 (2017).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. One prong of ORS 197.830(3) suspends the 21-day deadline for filing a notice of intent to appeal, where “the local government makes a land use decision that is 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.” To take advantage of the delayed deadline for filing a notice of intent to appeal under ORS 197.830(3)(b), which allows petitioner to file the notice of intent to appeal within 21 days of the date petitioner “knew or should have known of the decision,” petitioner must establish that she was entitled to the defective notice of hearing under state (as opposed to local) law. *Phillips v. City of Corvallis*, 75 Or LUBA 315 (2017).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(3)(b), the deadline for a petitioner to file a notice of intent to appeal expires 21 days after petitioner “knew or should have known of the decision.” As LUBA explained in *Rogers v. City of Eagle Point*, 42 Or LUBA 607, 616 (2002), if a petitioner does not have knowledge of the decision but obtains information that puts the petitioner on inquiry notice of the decision and thereafter makes timely inquiries and discovers the decision, the 21-day appeal period begins on the date the decision is discovered. *Phillips v. City of Corvallis*, 75 Or LUBA 315 (2017).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a petitioner was put on inquiry notice in June that a subdivision approval decision issued the prior year included a condition that required off-site sidewalk improvements, but petitioner delayed six months until December to request a copy of the decision, that is not a “timely” inquiry under *Rogers v. City of Eagle Point*, 42 Or LUBA 607, 616 (2002). *Phillips v. City of Corvallis*, 75 Or LUBA 315 (2017).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a notice of intent to appeal is sent to LUBA by certified mail before the ORS 197.830(9) 21-day filing deadline expires, but the notice of intent to appeal is mailed to one of LUBA’s old addresses rather

than its current address and is returned to petitioner by the post office, and petitioner then mails the notice of intent to appeal to LUBA a second time by certified mail after the 21-day deadline has expired, the date of the second mailing is the date of “filing” under OAR 661-010-0015(b), and the appeal must be dismissed as untimely filed. *Shepherd v. Yamhill County*, 75 Or LUBA 361 (2017).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the text of an order requiring petitioner to file an amended notice of intent to appeal states the order is dated December 15, but the order is date stamped December 16 and was mailed December 16, the order is “dated” December 16, for purposes of calculating the seven-day deadline for filing an amended notice of intent to appeal. *Neighbors for Smart Growth v. Washington County*, 75 Or LUBA 481 (2017).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(3)(b), a petitioner must file an appeal to LUBA within 21 days of the date the petitioner “knew or should have known” of the decision. Where the petitioner gains information indicating that the local government may have made a decision approving development, the petitioner is placed on “inquiry notice,” and must make timely inquiries with the local government to discover the decision. If the petitioner makes timely inquiries, the 21-day clock begins running on the date the petitioner obtains a copy of the decision. *Rogue Advocates v. Jackson County*, 74 Or LUBA 38 (2016).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Filing a notice of intent to appeal (NITA) using an overnight delivery service is not the same as filing the NITA by certified mail, which is the method that OAR 661-010-0015(1) requires in order for a petitioner to rely on the date of mailing as the date of filing of a NITA. *Chapman and Chapman LLC v. Coos County*, 73 Or LUBA 123 (2016).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a notice of intent to appeal is delivered to LUBA by an overnight delivery service more than 21 days from the date the city’s decision became final, the appeal is untimely filed, and LUBA will dismiss the appeal. *Chapman and Chapman LLC v. Coos County*, 73 Or LUBA 123 (2016).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a notice of intent to appeal identifies two decisions that were adopted on different dates as the subjects of the appeal, but the notice of intent to appeal is timely filed with regard to only one of the identified decisions, the appeal may proceed with regard to the decision for which the notice of intent to appeal was timely filed. *Lifestyle Ventures v. Clackamas County*, 73 Or LUBA 388 (2016).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a hearing is held, ORS 197.830(3)(b) cannot operate to expand the time for filing an appeal, because ORS 197.830(3)(b) applies only “where no notice is required.” The “notice” that is “required” refers to notice of all quasi-judicial hearings under ORS 197.763(2). *Phillips v. City of Happy Valley*, 72 Or LUBA 196 (2015).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A city’s error in

the notice of the decision that stated an incorrect appeal deadline for appealing the decision to LUBA does not toll the deadline for filing the NITA under ORS 197.830(9), which requires that the “notice of intent to appeal (NITA) a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.” *Stone Age Republic, LLC v. City of Grants Pass*, 72 Or LUBA 420 (2015).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a local government provides written prehearing notice to petitioner and in fact holds a hearing on a proposal to annex and rezone property, the part of ORS 197.830(3) that delays the deadline for filing a notice of intent to appeal a decision that is rendered “without providing a hearing” until 21 days after a petitioner receives actual or constructive notice does not apply. *Phillips v. City of Happy Valley*, 71 Or LUBA 5 (2015).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a city’s prehearing notice identifies the 10 properties to be annexed and rezoned, and identifies the city zoning to be applied to the 10 properties, and then after the hearing the city adopts an ordinance that annexes and applies the same zoning identified in the prehearing notice, the city does not make “a decision that is 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 action,” within the meaning of ORS 197.830(3). In that circumstance, the 21-day deadline specified in ORS 197.830(9) for filing the notice of intent to appeal applies, not the delayed ORS 197.830(3) deadline. *Phillips v. City of Happy Valley*, 71 Or LUBA 5 (2015).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. While failures to comply with the notice requirements set out at ORS 197.763(3) could also be sufficient to constitute a failure to “reasonably describe the local government’s final actions,” within the meaning of ORS 197.830(3), it does not necessarily follow that any failure to comply with ORS 197.763(3) results in a failure to “reasonably describe the local government’s final action.” The inquiries under those two statutes are not the same. *Phillips v. City of Happy Valley*, 71 Or LUBA 5 (2015).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Identifying existing county zoning and proposed new city zoning to be applied to the annexed property using abbreviated references and acronyms for the zoning districts does not mean the city gave notice that “did not reasonably describe the local government’s final actions,” within the meaning of ORS 197.830(3). A reasonable person would be put on inquiry notice by such a notice and would not assume no substantive change was proposed through the annexation and rezoning. *Phillips v. City of Happy Valley*, 71 Or LUBA 5 (2015).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A city’s failure to provide a notice of hearing that is required only by local law will not operate under ORS 197.830(3) to toll the 21 day appeal period set out in the first sentence of ORS 197.830(9). To the extent *Leonard v. Union County*, 24 Or LUBA 362 (1992), holds to the contrary, it is overruled. *Aleali v. City of Sherwood*, 68 Or LUBA 153 (2013).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a

petitioner does not claim that he owns property within 100 feet of the property that was the subject of the notice of a hearing, or that the city failed to provide petitioner with notice he was entitled to receive under ORS 197.763(2)(a), the petitioner is not entitled to rely on ORS 197.830(3), and his notice of intent to appeal filed later than 21 days after the decision becomes final is not timely filed. *Aleali v. City of Sherwood*, 68 Or LUBA 153 (2013).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(4)(c) provides an alternative appeal deadline for a person who received notice of the decision where the local government makes a decision on an application for a “permit” without a hearing pursuant to ORS 227.175(10)(c) “if the mailed notice of the decision did not reasonably describe the nature of the decision.” *Lekas v. City of Portland*, 68 Or LUBA 501 (2013).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Mailed notice of a decision on a permit made without a hearing pursuant to ORS 227.175(10)(c) reasonably describes the nature of the decision, where the city’s notices of the proposal and the decision describe an adjustment for a reduced side yard setback for a new garage, and the city’s final decision approved exactly that. In that circumstance a petitioner is not entitled to take advantage of the alternative appeal deadline under ORS 197.830(4)(c). *Lekas v. City of Portland*, 68 Or LUBA 501 (2013).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(3)(b) provides an alternative appeal deadline for decisions made without a hearing and requires a petitioner to file a notice of intent to appeal the decision “within 21 days of the date petitioners knew or should have known of the decision.” Where the record demonstrates that a petitioner knew of a decision made without a hearing more than 21 days before he filed the notice of intent to appeal, the notice of intent to appeal is not timely filed and LUBA lacks jurisdiction over the appeal. *Lekas v. City of Portland*, 68 Or LUBA 501 (2013).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a local government has rendered a permit decision without recognizing that its decision was a permit decision and without providing notice of that decision as required by ORS 215.416(11), ORS 197.830(3)(a) applies, and the “actual notice” that the statute requires is provided only when the local government provides the written notice of the decision that is required by law or a copy of the decision itself. *Keith v. Washington County*, 66 Or LUBA 80 (2012).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(3) tolls the 21-day appeal deadline in ORS 197.830(9) for persons who are misled by the differences between the proposal described in the notice of hearing and the proposal as approved, and due to that misleading notice failed to appear at the hearing and become entitled to the notice of decision. If a petitioner did not view the notice of hearing, then the petitioner could not have been misled by the notice. *Brodersen v. City of Ashland*, 62 Or LUBA 471 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Applying the “notice of hearing did not reasonably describe the proposal” language in ORS 197.830(3) to a legislative decision is problematic, because generally no individual notice is required, and the only notice of hearing required for a legislative decision is the notice provided to the Department of

Land Conservation and Development and any general publication notices in local newspapers. *Brodersen v. City of Ashland*, 62 Or LUBA 471 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The “notice of hearing did not reasonably describe” the proposal language in ORS 197.830(3) focuses on the difference between the final action and the proposal described in the notice of hearing, not on differences between the final action and the proposal itself as it may be modified during the proceedings below. *Brodersen v. City of Ashland*, 62 Or LUBA 471 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. That an intermediate draft of a proposed ordinance posted on the city’s website differed from the city’s final ordinance as adopted is not sufficient to toll the 21-day deadline to appeal the final ordinance under ORS 197.830(3), where the notice of hearing for the original draft of the proposed ordinance reasonably described the final ordinance. *Brodersen v. City of Ashland*, 62 Or LUBA 471 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. When a local government is processing a post-acknowledgement plan amendment pursuant to ORS 197.610 to 197.625 and a person requests in writing that he or she be provided notice of the decision, the deadline for appealing that decision to LUBA begins to run when that person is provided notice of the decision. *Jacobsen v. City of Winston*, 62 Or LUBA 493 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(4), in order for a petitioner to file an appeal outside of the 21-day deadline provided in ORS 197.830(9), the petitioner must demonstrate that (1) the mailed notice of the decision did not reasonably describe the nature of the decision, and (2) that petitioner filed the appeal within 21 days of receiving actual notice of the nature of the decision. *Wright v. Marion County*, 62 Or LUBA 542 (2010).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Like ORS 197.830(3)(a), the ORS 197.830(4)(c) 21-day deadline begins to run upon “actual notice,” rather than on the date the petitioners “should have known of the decision,” as provided in ORS 197.830(3)(b). *Wright v. Marion County*, 62 Or LUBA 542 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where LUBA concludes that the decision on appeal is not a land use decision or limited land use decision, because it is a fiscal decision, and transfer’s the decision to circuit court, LUBA need not also

determine whether petitioner’s notice of intent to appeal was filed within the 21-day deadline established by OAR 661-010-0015(1). Whether the appeal was timely filed will be for the circuit court to decide, and the only relevant question regarding the timeliness of the appeal will be whether the appeal was filed within the 60 days allowed by ORS 34.030. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Except in certain circumstances specified in ORS 197.830, the 21-day deadline for filing an appeal at LUBA is set out at ORS 197.830(9). *Turner v. Jackson County*, 61 Or LUBA 467 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The 21-day deadline established by ORS 197.830(9) begins to run when a land use decision is final or when notice of the decision is mailed or submitted to parties that are entitled to notice of a post-acknowledgment land use decision under ORS 197.615. ORS 197.830(3) delays the running of that 21-day deadline in two circumstances: (1) where a land use decision is made without a hearing and (2) where a notice of hearing does “not reasonably describe the local government’s final action.” *Turner v. Jackson County*, 61 Or LUBA 467 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Even if an appeal was timely filed under ORS 197.830(3), ORS 197.830(6)(a) imposes a three-year statute of ultimate repose. *Turner v. Jackson County*, 61 Or LUBA 467 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. An ordinance that adopts new comprehensive plan and zoning maps for an entire county is a legislative decision rather than a quasi-judicial decision, even if that ordinance also changes the zoning on a single parcel. *Turner v. Jackson County*, 61 Or LUBA 467 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.620 simply displaces the ORS 197.830(2) requirement that a petitioner at LUBA must have “[a]ppeared” before the body that adopted a land use decision in cases that concern post-acknowledgment land use regulation or comprehensive plan amendments. ORS 197.620(1) substitutes a requirement that a petitioner must have “participated either orally or in writing” to have standing to appeal a post-acknowledgment comprehensive plan or land use regulation amendment to LUBA for the generally applicable ORS 197.830(2) *appearance* requirement that applies to other kinds of land use decisions. ORS 197.620(2) authorizes a petitioner to appeal such post-acknowledgment land use decisions without participating or making an appearance in the proceedings that lead to decisions, where the notice that precedes the hearings on those decisions was deficient. *Turner v. Jackson County*, 61 Or LUBA 467 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Neither ORS 197.620(1) nor 197.620(2) obviates the requirement that a petitioner must file a notice of intent to appeal or that the notice of intent to appeal be *timely* filed in accordance with the applicable requirements of ORS 197.830(3), (6) and (9). *Turner v. Jackson County*, 61 Or LUBA 467 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A notice of hearing that states that a proposed land use is a “mixed-use development” planned unit

development with 82 residential dwelling units and includes a map that shows the proposed buildings and provides additional details is sufficient to “reasonably describe the local government’s final actions,” within the meaning of ORS 197.830(3), where the approved development is a mixed residential and commercial use. *Duenweg v. City of Medford*, 60 Or LUBA 1 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The failure of a notice of hearing for a mixed-use residential and commercial PUD to specifically mention that the PUD housing will be occupied by the families of recovering addicts and senior citizen mentors for those families does not result in a notice of hearing that does “not reasonably describe the local government’s final actions,” within the meaning of ORS 197.830(3). *Duenweg v. City of Medford*, 60 Or LUBA 1 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a petitioner was not entitled to receive written notice of a hearing on a mixed-use planned unit development and did not see the published notice of hearing, he could not have been misled by the notice of hearing. The deadline for filing the petition for review expired 21 days after the decision became final under ORS 197.830(9) and ORS 197.830(3) does not operate to delay the deadline for filing a petition for review to 21 days after petitioner knew or should have known of the decision. *Duenweg v. City of Medford*, 60 Or LUBA 1 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A local ordinance that provides that a decision becomes effective 14 days after mailing notice of the decision means that the decision is *effective* at that date. The ordinance does not delay the date the decision becomes *final* for purposes of appeal to LUBA under OAR 661-010-0010(3). *VK Northwest, Inc. v. City of West Linn*, 60 Or LUBA 39 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Even though the language of a final decision is somewhat misleading in stating that it becomes final at a later date, a misstatement of fact and law in the decision does not excuse a petitioner from filing a timely notice of intent to appeal. *VK Northwest, Inc. v. City of West Linn*, 60 Or LUBA 39 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a petitioner is only entitled to notice of a hearing under local provisions, and is not entitled to such notice under state statutes, under *Orenco Neighborhood v. City of Hillsboro*, 135 Or App 428, 899 P2d 720 (1995), any failure to provide notice of a hearing does not toll the 21-day appeal deadline under ORS 197.830(9), pursuant to ORS 197.830(3). *Plaid Pantries, Inc. v. City of Tigard*, 60 Or LUBA 441 (2010).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. In order to appeal to LUBA under the “different notice/final action” language of ORS 197.830(3), the nature or scope of the proposed use as described in the notice of proposed action must differ to such a degree from the final action that the notice does not “reasonably describe” the final action. Where there is no difference between the nature and scope of the property line adjustment described in the notice of hearing and the property line adjustment described in the notice of decision, ORS 197.830(3) does not apply. *Ebar v. Harney County*, 59 Or LUBA 201 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The “different notice/final action” provisions of ORS 197.830(3) generally apply to persons who are misled by a deviation in substance between the notice of proposed action and the final action, and because of that deviation do not appear at the hearing and thereby become entitled to timely notice of the decision and hence notice of the opportunity to appeal the decision to LUBA. *Ebar v. Harney County*, 59 Or LUBA 201 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. In general, NITAs must be filed within 21 days of the challenged decision becoming final, unless one of the exceptions to the 21-day requirement set forth in ORS 197.830(9) applies. *Thalman v. Marion County*, 58 Or LUBA 23 (2008).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Even if petitioners are correct that ODOT failed to provide notice of an amended road widening project as required by ODOT’s rules, failure to provide notice under ODOT’s rules does not provide an exception to the 21-day deadline for filing the notice of intent to appeal. When the challenged decision is not a comprehensive plan or land use regulation amendment, the provisions of ORS 197.610 to 197.625 starting the clock for the 21-day deadline upon notice of the decision being mailed do not apply. *Hereditary Chief Wilbur Slockish v. ODOT*, 58 Or LUBA 83 (2008).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(9) and OAR 661-010-0015(1)(a), the 21-day deadline for filing a notice of intent to appeal began to run either on the date the decision became final or on the date notice of the appealed decision was “mailed to parties entitled to notice under ORS 197.615 * * *.” ORS 197.830(3) through (5) provide exceptions to the general 21-day deadline for filing a notice of intent to appeal with LUBA, which is established by ORS 197.830(9). *Reeves v. City of Wilsonville*, 58 Or LUBA 545 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Local laws that only delay the date an ordinance takes effect do not also delay the date an ordinance becomes final for purposes of appeal to LUBA. *Reeves v. City of Wilsonville*, 58 Or LUBA 545 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Procedural errors a city may have committed might provide a basis for reversal or remand, if there is a timely appeal of a land use decision. However, any such procedural errors do not have the legal effect of preventing a land use decision from becoming final or delaying the date of finality. *Reeves v. City of Wilsonville*, 58 Or LUBA 545 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under OAR 661-010-0015(1)(b), a notice of intent to appeal is filed on the date it is mailed, provided it is mailed by “registered or certified mail.” A notice of intent to appeal that is mailed on the last day to timely file the notice of intent to appeal and is received five days later by LUBA is not timely filed, where the notice of intent to appeal was not mailed by “registered or certified mail.” *Reeves v. City of Wilsonville*, 58 Or LUBA 545 (2009).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. When a petitioner is placed on inquiry notice that a land use decision or limited land use decision has been made and makes proper inquiries to the local government, a petitioner cannot be faulted when the local government takes the position that no such decision has been made. If a petitioner makes the proper inquiries, the 21-day time limit for filing the NITA begins when a petitioner learns of the decision. *Biggerstaff v. Yamhill County*, 58 Or LUBA 665 (2008).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A notice of hearing does not “reasonably describe the final action” for purposes of tolling the appeal period under ORS 197.830(3) when the parties are misled by the deviation between the notice of the proposed action and the substance of the decision. *Pacific Cascade Resources v. Columbia County*, 55 Or LUBA 216 (2007).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A notice of hearing stating that the county will consider an application to renew a mining permit subject to approval criteria listed in the notice is a fair description of the final action for purposes of ORS 197.830(3), where the final action approves the application to renew a mining permit under the listed criteria. *Pacific Cascade Resources v. Columbia County*, 55 Or LUBA 216 (2007).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. That a notice of hearing does not list the conditions of approval the county might decide to impose or indicate that the county might impose conditions of approval does not mean that the notice fails to “reasonably describe the final action” for purposes of ORS 197.830(3), particularly where petitioner knew or should have known that the county intended to impose conditions of approval on petitioner’s application. *Pacific Cascade Resources v. Columbia County*, 55 Or LUBA 216 (2007).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. An amended notice of intent to appeal that corrects all deficiencies under OAR 661-010-0015(3) does not have to be filed within the 21 day deadline of OAR 661-010-0015(1)(a) in order to establish LUBA’s jurisdiction, provided that the original notice of intent to appeal was timely filed. *O’Rourke v. Union County*, 54 Or LUBA 758 (2007).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. An ambiguous finding that is included in a 23-page findings document supporting a subdivision approval decision is not sufficient to provide actual or constructive notice of a prior county decision that approved a land use compatibility statement concerning grading related to that subdivision. *Wolfgram v. Douglas County*, 52 Or LUBA 536 (2006).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(3) and 197.620(2) are similarly worded and impose the same legal standard. Under those statutes

there are certain legal consequences where the notice of hearing is inadequate to describe the local government's ultimate decision. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Any questions that may be raised regarding how a local government chooses to go about applying the approval criteria that are listed in a notice of hearing to the proposal described in the notice implicate the merits of this appeal; those questions do not implicate the adequacy of the city's notice under ORS 197.620(2) and 197.830(3). *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where petitioners fail to establish that any statute obligates a county to provide petitioners notice of a building permit decision that modifies a condition of partition approval, the “knew or should have known” standard at ORS 197.830(3)(b) applies rather than the “actual notice” standard at ORS 197.830(3)(a), in determining whether an appeal is timely filed under that statute. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The 21-day deadline to file an appeal under ORS 197.830(3)(b) begins on the date petitioners knew or should have known of the “decision,” *i.e.*, that the local government had approved development on the subject property. It is not necessary that petitioners know the particular detail of the proposed development that offends them, such as its exact location on the property, before the 21-day deadline begins running. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the petitioners are provided written notice of an application for a proposed height variance for an already approved dwelling, the petitioners are placed on at least “inquiry notice” that the county has previously approved a dwelling on the subject property. Given that information, it is incumbent on petitioners to make timely inquiries to discover the decision that approved the dwelling, such as investigating the planning file, and failure to make such inquiries within 21 days of being placed on inquiry notice means that the deadline to appeal the decision to LUBA under ORS 197.830(3)(b) begins on the date of inquiry notice. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. An appeal that is filed four to five weeks after the petitioners learned that the local government had approved the challenged decision is untimely filed under ORS 197.830(3)(b). *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where nothing in a conditional use permit proceeding concerning development of three lots in an existing subdivision is sufficient to put petitioner on notice of the existence of an earlier decision approving reconfiguration of those three lots, petitioner knew or should have known of the challenged reconfiguration decision only when her consultant informed her of the existence of that decision. *Borton v. Coos County*, 51 Or LUBA 478 (2006).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A petitioner who

asserts that the deadline for filing a notice of intent to appeal is governed by ORS 197.830(3)(b) must demonstrate that he or she is “adversely affected” by the appealed land use decision and that the notice of intent to appeal was filed within 21 days after the petitioner first “knew or should have known of the [challenged] decision.” LUBA will reject a petitioner’s argument that ORS 197.830(3)(b) applies, where the petitioner fails to make either of those demonstrations. *Clearwaters v. Josephine County*, 50 Or LUBA 600 (2005).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The statutory deadline for filing a notice of intent to appeal under ORS 197.830(9) depends on the nature of the decision the local government adopted, not the nature of the decision the local government should have adopted. Whether the 21-day deadline for filing a notice of intent to appeal is governed by the first or second sentence of ORS 197.830(9) depends on whether the local government’s decision was a post-acknowledgment plan or land use regulation amendment “processed pursuant to ORS 197.610 to 197.625.” *Clearwaters v. Josephine County*, 50 Or LUBA 600 (2005).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where it appears that the relevant statute requires that the 21-day deadline to file a notice of intent to appeal should be measured from the date the decision was reduced to writing and signed, the notice of intent to appeal was filed more than 21 days after that date, and petitioners offer no reason to believe the 21-day deadline should be measured from some other date, LUBA will grant the local government’s motion to dismiss. *Barry v. Josephine County*, 50 Or LUBA 680 (2005).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where one of four applications seeks site plan approval but the other three applications concern post-acknowledgment plan or land use regulation amendments and the local government issues a single decision in response to those four applications, the second sentence of ORS 197.830(9) rather than the first sentence of ORS 197.830(9) applies. Under the second sentence of ORS 197.830(9), the 21-day deadline for filing a notice of intent to appeal begins to run on the date the local government mails notice “to parties entitled to notice under ORS 197.615.” *Lindsey v. Josephine County*, 50 Or LUBA 741 (2005).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where ORS 197.830(3) applies, it generally provides the filing deadline to LUBA only for decisions made without providing a hearing. However, in two circumstances ORS 197.830(3) can provide the LUBA filing deadline notwithstanding that the local government held a hearing: (1) where the decision differs from the proposal described in the notice of proposed action to such a degree that the notice did not reasonably describe the final action, and (2) where the local government fails to provide notice of hearing to a person entitled to such notice, and due to that failure the person does not appear at the hearing and become entitled to notice of the decision. *Cutsforth v. City of Albany*, 48 Or LUBA 304 (2004).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where no statute or code provision entitles the petitioner to notice of hearing for a proposed legislative decision, the petitioner may not file a belated appeal to LUBA pursuant to ORS 197.830(3), under the theory described in *Leonard v. City of Hillsboro*, 24 Or LUBA 362 (1992), which depends on entitlement to notice of the hearing. *Cutsforth v. City of Albany*, 48 Or LUBA 304 (2004).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the local government conducts a hearing at which the petitioners appear, the local government has “provid[ed] a hearing” for purposes of ORS 197.830(3), and therefore ORS 197.830(9) rather than ORS 197.830(3) provides the deadline for filing an appeal of the decision to LUBA. *Cutsforth v. City of Albany*, 48 Or LUBA 304 (2004).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Even assuming that a local government’s failure to provide notice of the decision to petitioners who appeared at the hearing and became entitled to notice of the decision might provide a basis for untimely appeal to LUBA under the reasoning in *Flowers v. Klamath County*, 98 Or App 384, 780 P2d 227 (1989), the causative element inherent in *Flowers* is not met where the decision was signed and became final at the hearing, the petitioners offer no reason why they did not or could not know that the city had adopted the decision, final as of the date of the hearing, and the petitioners do not allege that the delay in filing the appeal was caused by the city’s failure to provide notice of the decision. *Cutsforth v. City of Albany*, 48 Or LUBA 304 (2004).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Notwithstanding that under OAR 661-010-0015 a notice of intent to appeal is deemed filed with LUBA on the date it is mailed by registered or certified mail, LUBA is not at liberty to read a similar provision into notices of intent to appeal decisions on reconsideration under OAR 661-010-0021(5). Notices under OAR 661-010-0021(5) are filed on the date they are delivered to or received by LUBA. *West Coast Media v. City of Tigard*, 45 Or LUBA 703 (2003).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Untimely filing of a notice of intent to appeal a decision on reconsideration under OAR 661-010-0021(5) is a technical violation of LUBA’s rules and does not affect LUBA’s review, absent prejudice to the substantial rights of the parties. *West Coast Media v. City of Tigard*, 45 Or LUBA 703 (2003).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Land use decisions appealed to LUBA pursuant to ORS 197.830(3) or (4) are not subject to the ORS

197.825(2)(a) exhaustion of remedies requirement absent circumstances where the local government voluntarily grants a local appeal, while decisions appealed pursuant to ORS 197.830(9) are subject to the exhaustion of remedies requirement. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a local government conducts a hearing but fails to provide notice of the decision to a petitioner who appeared at the hearing, that failure of process does not obviate the requirement that the petitioner exhaust all administrative remedies below before appealing to LUBA. In such circumstances, the local government must accept a properly filed local appeal from the petitioner and cannot reject that local appeal on the basis of an imperfection that is caused by the local government's own procedural error. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

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

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(3)(b), where a petitioner does not have knowledge of a land use decision but observes activity or otherwise obtains information reasonably suggesting that a land use decision has been rendered, that petitioner is placed on notice to make inquiries regarding the nature of the land use decision. The 21-day appeal deadline begins to run on the date that timely inquiries are made and the decision is discovered or, in the absence of timely inquiries, on the date the petitioner is placed on inquiry notice. *Rogers v. City of Eagle Point*, 42 Or LUBA 607 (2002).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Evidence in the record that petitioners knew an application for a proposed subdivision was pending before the local government is not sufficient to establish, for purposes of ORS 197.830(3), that petitioners knew or should have known that the subdivision application would be approved or that the application included a proposal to develop a lot within *petitioners'* subdivision as an access street for the proposed subdivision. *Rogers v. City of Eagle Point*, 42 Or LUBA 607 (2002).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where at least one local hearing is provided, ORS 197.830(9) establishes a deadline of 21 days after the decision becomes final or 21 days after notice of the decision is mailed for appealing a land use decision to LUBA. Where no local hearing is provided, ORS 197.830(3) and (4) provide the deadlines for appealing land use decisions to LUBA. *Warf v. Coos County*, 42 Or LUBA 84 (2002).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(4) comprehensively addresses the situation where a local government makes a permit decision without a hearing pursuant to ORS 215.416(11) or 227.175(10). *Warf v. Coos County*, 42 Or LUBA 84 (2002).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a planning director’s decision to revoke a previously approved appeal fee waiver and reject petitioner’s local appeal was final when rendered, and petitioner did not file a timely appeal with LUBA to challenge that decision, petitioner may not challenge the fee waiver revocation and denial of the local appeal in an appeal of a subsequent planning director letter that merely reiterates the earlier decision. *Babbitt v. City of Portland*, 41 Or LUBA 151 (2001).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A 1995 decision *denying* a request for a variance to build a house that exceeds zoning height limits by 6.5 feet does not constitute a decision *approving* construction of a house that is 6.5 feet shorter. An appeal challenging a subsequent building permit that approves construction of a house that is reduced in height is not a collateral attack on the 1995 variance decision and will not be dismissed as untimely filed. *Tirumali v. City of Portland*, 40 Or LUBA 565 (2001).

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

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The “actual

notice” standard of ORS 197.830(4)(a) is identical to the “actual notice” standard of ORS 197.830(3)(a). A petitioner receives “actual notice” of a decision when the petitioner is: (1) provided a copy of the decision; (2) provided written notice of the decision; or (3) circumstances exist that are sufficient to inform the petitioner of both the existence and substance of the decision. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where ORS 197.830(4) applies it provides a right to appeal directly to LUBA, within certain time limits, notwithstanding that the deadline for filing a local appeal has expired. In such circumstances, there is no local appeal available to be exhausted pursuant to ORS 197.825(2)(a). *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. LUBA will not dismiss an appeal of a letter that provided notice of an earlier land use decision, provided the notice of intent to appeal adequately identifies the land use decision being appealed, and the notice of intent to appeal is filed within the period allowed by statute for appeal of the land use decision. *Kent v. City of Portland*, 39 Or LUBA 455 (2001).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. When a party receives notice of a land use decision by means of a follow-up clarification letter, an appeal of that clarification letter is sufficient to appeal the earlier land use decision, as long as the appeal is filed within the period in which the party could have timely appealed the land use decision. *Kent v. City of Portland*, 38 Or LUBA 942 (2000).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. 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).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A party is “adversely affected,” for purposes of ORS 197.830(5), only if the party demonstrates that the decision impinges on that party’s use and enjoyment of its property, or otherwise detracts from interests personal to the party. *Mountain West Investment v. City of Silverton*, 38 Or LUBA 400 (2000).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where petitioner alleges only that it is the applicant’s business competitor and that the applicant appeared in opposition to the siting of petitioner’s facility, petitioner has failed to demonstrate how the city’s decision to approve the site design for the applicant’s facility impinges on petitioner’s use and enjoyment of *its* property or otherwise adversely affects petitioner. *Mountain West Investment v. City of Silverton*, 38 Or LUBA 400 (2000).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. LUBA will dismiss an appeal as untimely filed where the notice of intent to appeal was filed more than 21 days after the local decision became final and petitioner fails to demonstrate how it qualifies for an exception to the 21-day filing deadline provided in ORS 197.830(5). *Mountain West Investment v. City of Silverton*, 38 Or LUBA 400 (2000).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Amendments to the statutory deadline for filing a notice of intent to appeal do not apply retroactively to land use decisions that were adopted and became final before the amended statute became effective, where the amending legislation does not indicate a legislative intent that the amendment should apply retroactively. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The “or should have known of the decision” language in ORS 197.830(3)(b) (1997) explicitly imposes an objective “discovery rule,” and may have the effect of starting the 21-day appeal period *before* a petitioner receives written notice of or a copy of a decision. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(3)(a) (1997), a petitioner receives “actual notice” of the decision when the petitioner is provided (1) a copy of the decision; (2) written notice of the decision; or (3) information that is equivalent to written notice or a copy of the decision. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(8), the time for appealing an amendment to an acknowledged plan or land use regulation is measured from the time the decision was mailed in accordance with ORS 197.615 and OAR 660-018-0040. Where a party files a notice of intent to appeal within 21 days of the date the

decision was mailed in accordance with the statute and rule, the notice of intent to appeal is timely filed. *Craig Realty Group v. City of Woodburn*, 37 Or LUBA 1041 (2000).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the availability of a local appeal is unclear and petitioner first seeks such a local appeal and then files a notice of intent to appeal with LUBA within 21 days after the local appeal is denied, petitioner’s appeal to LUBA is timely. *Hal’s Construction, Inc. v. Clackamas County*, 37 Or LUBA 981 (1999).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(3) authorizes the filing of a notice of intent to appeal after the 21-day deadline specified by ORS 197.830(8) where the approved proposal differs in some significant way from the proposal that is described in the notice of hearing, such that the notice “did not reasonably describe the local government’s final action.” A multifaceted zoo conditional use master plan with a permanent parking lot does not so differ from a multifaceted zoo conditional use master plan with a temporary parking lot that the notice of hearing “did not reasonably describe the local government’s final action.” *Bigley v. City of Portland*, 37 Or LUBA 544 (2000).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where petitioner fails to file a notice of intent to appeal within 21 days after the decision becomes final, the appeal will be dismissed, notwithstanding petitioner’s allegation that she did not receive her mailed copy of the challenged decision until after the appeal period had expired. *Roberts v. Clackamas County*, 36 Or LUBA 170 (1999).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the county administratively approves development under ORS 215.416(11), but fails to provide an adjacent landowner with either the notice or the opportunity for local appeal required by statute, the time to file an appeal of that approval to LUBA is tolled until the landowner receives actual notice, pursuant to ORS 197.830(3). *Bowlin v. Grant County*, 35 Or LUBA 776 (1998).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A local government’s notice of a post-acknowledgment decision is not sufficient to start the 21-day appeal period in ORS 197.830(8) where the post-acknowledgment decision is not yet final. *Schaffer v.*

City of Turner, 35 Or LUBA 744 (1998).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Even if no one requests notice of a post-acknowledgment plan amendment decision under ORS 197.615(2), the local government is required to mail notice of the decision to DLCD, thus there is always a mailing requirement under ORS 197.615 from which the period for appealing post-acknowledgment plan amendments is measured. *City of Hillsboro v. Metro*, 34 Or LUBA 775 (1998).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The appeal period provided in the second sentence of ORS 197.830(8) applies to any person with standing to appeal, and not only to the person or persons who are entitled to notice under ORS 197.615. *City of Hillsboro v. Metro*, 34 Or LUBA 775 (1998).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the challenged decision is an intergovernmental agreement that must be signed by representatives of both the county and the city, the decision becomes final under OAR 661-010-0010(3) when it bears the signatures of necessary decision makers. The unilateral signing of the agreement by the county commissioners does not render the decision final until the city’s authorized representatives supply their signatures. *Sparks v. Polk County and City of Monmouth*, 34 Or LUBA 731 (1998).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Whether notice of decision is “required” under ORS 197.830(3) is determined by the procedure the local government followed, not by the procedure the local government should have followed. *Fechtig v. City of Albany*, 34 Or LUBA 561 (1998).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830 a notice of intent to appeal (NITA) must be filed with LUBA within 21 days after the decision being appealed became final. Where petitioner files a NITA 20 days after notice of the decision was mailed, but 22 days after the decision became final, petitioner’s NITA is not timely filed, and LUBA does not have jurisdiction to hear the appeal. *Dalton v. City of West Linn*, 34 Or LUBA 438 (1998).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where persons receive notice of a nonfarm dwelling application and upon investigation discover that a property line adjustment was approved for the property without a hearing several months earlier, and petitioners file a notice of intent to appeal the property line adjustment decision within 18 days of actual notice of the property line adjustment decision, the notice of intent to appeal is timely filed. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. When amendments to a county’s comprehensive plan are processed according to post-acknowledgment procedures, the second sentence of ORS 197.830(8) governs, and appeals may be filed within 21 days of the date the decision is mailed, rather than the date the decision becomes final. *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A plan and land use regulation amendment processed pursuant to post-acknowledgment procedures may be appealed within 21 days of the date the decision is mailed, as provided in ORS 197.830(8), notwithstanding a local government’s failure to comply with all required post-acknowledgment procedures. *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under OAR 661-10-010(3), a local decision becomes final on the date it is reduced to writing and signed by a decision maker, unless local legislation provides that the decision becomes final at a later date. Therefore, the 21-day time limit for filing a notice of intent to appeal to LUBA begins on the date the decision is reduced to writing and signed, not the date of the session at which the local government orally made the decision. *Brown v. City of Portland*, 33 Or LUBA 700 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Consistent with *Wicks-Snodgrass v. City of Reedsport*, 148 Or App 217, 939 P2d 625 (1997), appeals to LUBA must be filed within 21 days of the date the decision becomes final, not a later date such as that of mailing or receipt of notice of the decision. *North Park Annex Bus. Trust v. City of Independence*, 33 Or LUBA 695 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A notice of intent to appeal to LUBA must be filed within 21 days of the date the decision becomes final, and misleading or outdated information regarding appeals to LUBA provided in a local government’s notice of final decision does not affect that deadline. *Elinski v. City of Lincoln City*, 33 Or LUBA 670 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a local code does not specify a date upon which a decision becomes final, OAR 661-10-010(3) specifies that the decision becomes final on the date it is reduced to writing and signed by the decision maker. *Adams v. City of Ashland*, 33 Or LUBA 552 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The 21-day time limit provided in ORS 197.830(8) for a petitioner to appeal a local land use decision to LUBA begins on the date the decision becomes “final,” not the date the decision becomes “effective”

under the local code. *DeBates v. Yamhill County*, 33 Or LUBA 526 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. If local ordinance does not define when a decision becomes final, it becomes final under OAR 661-10-010(3) when it is reduced to writing and bears the necessary signatures of the decision makers, regardless of the date notice of the decision is sent or erroneous information provided in that notice. *DeBates v. Yamhill County*, 33 Or LUBA 526 (1997).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the county’s first notice to petitioner was faulty and was not received before the initial local hearing, but a second notice that complied with ORS 197.763(8) was sent before subsequent local hearings, a petitioner is not denied his right to a hearing and is not excused from his obligation to file a timely notice of intent to appeal with LUBA. *Epling v. Washington County*, 33 Or LUBA 392 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.610 to ORS 197.625, only state notice requirements must be followed to avoid tolling, under ORS 197.830(3), the 21-day appeal period provided in ORS 197.830(8). *Petersen v. Columbia County*, 33 Or LUBA 253 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the city explains in its decision to grant a development permit that a conditional use review is not required, a letter from the city planning director written five months later stating that the review is not required is not itself an appealable land use decision, and an appeal five months from the initial decision is not timely. *Northwest Environmental Adv. v. City of Portland*, 33 Or LUBA 45 (1997).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A decision becomes final for purposes of an appeal to LUBA when the prescribed written notice of decision is mailed or personally delivered to the party seeking to appeal. *J.C Reeves Corp. v. Washington County*, 32 Or LUBA 263 (1996).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under OAR 610-10-015(1)(b), a notice of intent to appeal mailed to LUBA within the 21-day time limit, but received by LUBA after the 21-day time limit has expired, is not timely filed. *J.C Reeves Corp. v. Washington County*, 32 Or LUBA 263 (1996).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(b), which allows appeals “within 21 days of the date a person knew or should have known of the decision where no notice is required,” does not apply where city and county provide properly noticed hearings of proceedings to amend local zoning ordinances. *Waite v. City of La Grande*, 31

Or LUBA 77 (1996).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. In determining whether a notice of intent to appeal is timely, LUBA will consider all evidence pertaining to when notice of the challenged decision was mailed to petitioner, including the metered date on the envelope used by the local government. *1000 Friends of Oregon v. Columbia County*, 31 Or LUBA 47 (1996).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Filing a petition for review prematurely is a technical violation of LUBA’s rules which will not result in dismissal unless the moving party shows prejudice to its substantial rights. *Cox v. Yamhill County*, 30 Or LUBA 479 (1996).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. In determining when a document has been mailed for purposes of determining the timeliness of a notice of intent to appeal, LUBA will rely on the most persuasive evidence available. *DLCD v. Yamhill County*, 30 Or LUBA 465 (1996).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Because the city’s decision to allow a continuation of an existing conditional use permit is not a limited land use decision under ORS 197.015, a subsequent statement of appeal rights in a notice letter provided by the city is not dispositive of whether petitioner’s appeal was timely filed. *Lloyd Dist. Community Assoc. v. City of Portland*, 30 Or LUBA 390 (1996).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A local government’s reiteration of a previous land use decision in a notice letter does not create a new appealable decision, and the inclusion of a statement of appeal rights in the notice letter does not convert that notice into a separate land use decision. *Lloyd Dist. Community Assoc. v. City of Portland*, 30 Or LUBA 390 (1996).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where petitioners received notice of the city’s earlier decision, and did not appeal that decision, a statement of appeal rights in a subsequent notice letter provided by the city cannot extend the deadline for appealing

the previous final land use decision. *Lloyd Dist. Community Assoc. v. City of Portland*, 30 Or LUBA 390 (1996).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(8), the date for computing when an appeal period begins to run is the date the decision becomes final, not the date the notice of decision is received by petitioner. *Lloyd Dist. Community Assoc. v. City of Portland*, 30 Or LUBA 390 (1996).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A notice of intent to appeal to LUBA that designates a corrected decision is timely if filed within the period allowed for appeals of the original (final) decision. *Caraheer v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The pursuit of a nonexistent local right of appeal does not suspend the date a land use decision becomes final for purposes of appeal to LUBA. *No Casino Association v. City of Lincoln City*, 30 Or LUBA 79 (1995).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 12.140, a 10-year statute of limitations for initiating civil actions in Oregon courts, does not apply to LUBA's proceedings. *Nehoda v. Coos County*, 29 Or LUBA 251 (1995).

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

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where ORS 197.830(3) applies, it provides a petitioner with a right to appeal directly to LUBA, within the time

limits established by ORS 197.830(3)(a) and (b), notwithstanding that the deadline for filing a local appeal may have expired. In such circumstances, there is no local appeal available to be exhausted pursuant to ORS 197.825(2)(a). *Beveled Edge Machines, Inc. v. City of Dallas*, 28 Or LUBA 790 (1995).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A LUBA appeal must be initiated within 21 days after a local governing body adopts its written order, unless petitioners establish that (1) the local government plan or code grants a right to seek rehearing or reconsideration of the governing body’s order; (2) petitioners sought such rehearing or reconsideration; and (3) under local legislation, such a request for rehearing or reconsideration has the effect of preventing the governing body’s order from becoming a *final* decision. *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the notice of public hearing given by the local government is inadequate, such that it does not “reasonably describe the local government’s final [decision],” ORS 197.830(3) potentially provides a person adversely affected by the inadequate notice a right to file an appeal at LUBA long after the local decision is reduced to writing, notice of the decision is given, and the decision otherwise becomes final. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. ORS 197.830(3) imposes a requirement that a reasonable person be able to tell from the notice of public hearing that the local government might take the action that the local government ultimately takes. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A notice of local hearing that includes a map showing all three tax lots included in a proposal is adequate to “reasonably describe the local governments final [decision],” within the meaning of ORS 197.830(3), notwithstanding the failure of the notice to list each tax lot’s address and the attachment of other maps to the notice which show only a portion of the property. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Absent local code provisions analogous to ORS 197.830(3), where a notice of local hearing in a quasi-judicial land use proceeding fails to adequately describe the action ultimately taken by the local government and the time for filing a local appeal has expired, an adversely affected person’s exclusive route of appeal is directly to LUBA. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The time for appealing a local government land use decision is not extended simply because the local government issues a subsequent order correcting clerical errors in the land use decision. *Kalmiopsis Audubon Society v. Curry County*, 27 Or LUBA 640 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where petitioner files a notice of intent to appeal within 21 days after the decision maker’s oral vote to adopt the challenged decision, but before the final written decision was adopted, the notice of intent to appeal

is timely filed under OAR 661-10-015(1), and petitioner will be permitted to amend the notice of intent to appeal to identify the correct date the challenged decision became final. *Sanchez v. Clatsop County*, 27 Or LUBA 713 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A notice of intent to appeal filed after respondent adopted a tentative oral decision, but before that decision was reduced to writing and became final, is filed “on or before the 21st day after the date the decision sought to be reviewed became final” and, therefore, is timely filed under OAR 661-10-015(1). *Fraser v. City of Joseph*, 27 Or LUBA 695 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. 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).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(3), the 21 day period to appeal a decision to LUBA is measured from the date the petitioner actually receives notice of the decision, rather than from the date the decision became final and the notice was mailed. *Fechtig v. City of Albany*, 27 Or LUBA 666 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. If a “permit” decision is erroneously processed as a limited land use decision, without a public hearing or an opportunity to request a hearing through a local appeal, then the challenged decision is a “land use decision” made without providing a hearing, and the deadline for filing a notice of intent to appeal with LUBA is governed by ORS 197.830(3). *Fechtig v. City of Albany*, 27 Or LUBA 666 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Decisions concerning development of property applying the elements of equitable estoppel require the exercise of factual and legal judgment and, therefore, are permits. Where a local government fails to provide a local public hearing or opportunity for appeal of such a permit decision, the deadline for filing a notice of intent to appeal the decision to LUBA is governed by ORS 197.830(3). *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The three-year statute of ultimate repose provided by ORS 197.830(5)(a) does not apply “[i]f notice of a hearing or an administrative decision pursuant to ORS 197.763, 197.195, 215.416(11) or 227.175(10) is required but has not been provided.” *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

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

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

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(8) and 215.416(10), a decision becomes final for purposes of appealing to LUBA “only after the required written notice of the decision is mailed or personally delivered to the party seeking to appeal.” *League of Women Voters v. Coos County*, 82 Or App 673, 729 P2d 588 (1986). *DLCD v. Crook County*, 25 Or LUBA 826 (1993).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. If a notice of intent to appeal a post-acknowledgment zone change is filed more than 21 days after petitioner was given the notice of decision it is entitled to under ORS 197.615, the appeal must be dismissed. *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A county planner’s misstatement to petitioner concerning when the county’s decision would become final does not alter the time period for filing a notice of intent to appeal the county’s decision to LUBA under ORS 197.830(8). *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the challenged decision approves a “permit,” and the petitioner was entitled to written notice of the decision under ORS 227.173(3), the petitioner has 21 days from the date the notice was mailed to him to appeal the challenged decision to LUBA. *A Storage Place v. City of Tualatin*, 24 Or LUBA 637 (1993).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A local government’s failure to provide a person with a required individual written notice of hearing is not sufficient, by itself, to entitle that person to be given individual written notice of the decision or to toll the 21 day deadline for filing a notice of intent to appeal with LUBA until individual written notice of the decision is provided. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The timely filing of a notice of intent to appeal is required for LUBA to have jurisdiction. Where the time for filing a notice of intent to appeal runs from the date a petitioner obtained actual knowledge of the decision or knew or should have known of the decision, it is petitioner’s burden to establish when the requisite knowledge of the decision was obtained. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a person participated in the legislative proceedings that led to the challenged decision and also participated in a related land use proceeding where the challenged decision was discussed, that person knew or should have known of the challenged decision as early as the date the discussion of the challenged decision occurred. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. That a local government may have provided inadequate notice of a post-acknowledgment plan and land use regulation amendment to the Department of Land Conservation and Development (DLCD) will not excuse a person’s failure to file a notice of intent to appeal that decision with LUBA within 21 days after the decision became final, where the person was not entitled to receive notice of the challenged decision from DLCD. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The 21-day period for filing a notice of intent to appeal established by ORS 197.830(8) begins to run only after the party seeking to appeal is given notice of the local government decision to which he is entitled by statute. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Even if petitioner were entitled under state statute to notice of local government hearings on comprehensive plan and land use regulation amendments and goal exceptions, and the local government failed to provide that notice, petitioner’s notice of intent to appeal would only be timely if it was filed within 21 days after petitioner received actual notice of the challenged decision. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. As the party

seeking review by LUBA, petitioner has the burden of establishing that LUBA has jurisdiction. Where a petitioner argues her notice of intent to appeal is timely because it was filed within 21 days after she received actual notice of the challenged decision, the petitioner must support her argument with affidavits, record citations or other evidence. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(8), OAR 661-10-015(1) and 661-10-075(2)(a), an appeal must be dismissed if the notice of intent to appeal is not delivered to or received by LUBA on or before the 21st day after the decision sought to be reviewed became final. *Pilling v. Crook County*, 23 Or LUBA 51 (1992).

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

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

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a petitioner's deposition discloses she learned the city may have approved certain permits, and thereafter petitioner promptly pursues the matter with the city planning department and obtains copies of the permits, the date she obtained the copies of the permits from the planning department is the date of actual notice of the permits for purposes of computing the deadline for filing a notice of intent to appeal at LUBA. *Citizens Concerned v. City of Sherwood*, 22 Or LUBA 390 (1991).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. The principles applicable to determining whether an organization has representational standing to appeal a decision to LUBA are also applicable to determining whether an organizational petitioner acting in its representational capacity is deemed to have *actual notice* for purposes of calculating the time for filing the notice of intent to appeal under ORS 197.830(3). *Tuality Lands Coalition v. Washington County*, 21 Or LUBA 611 (1991).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where one of a petitioner organization's members did not receive actual notice of a land use decision more than 21 days prior to the time the notice of intent to appeal was filed, an evidentiary hearing to establish that *other* individual members of the organization or the organization's board of directors had

actual notice of the challenged decision more than 21 days before the challenged decision was made, is not warranted. Even if other members received such actual notice, petitioner's notice of intent to appeal in its *representational* capacity would be timely. *Tuality Lands Coalition v. Washington County*, 21 Or LUBA 611 (1991).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Under ORS 197.830(3), a petitioner must file a notice of intent to appeal challenging a local government land use decision rendered without a hearing, within 21 days of “actual notice” or “the date a person knew or should have known of the decision,” depending on whether notice was required or not. *Rebmann v. Linn County*, 21 Or LUBA 542 (1991).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Allegations that petitioners and petitioners' former attorney were sent a copy of the challenged decision by uncertified mail more than 21 days before the notice of intent to appeal was filed are insufficient to establish that petitioners had actual notice or knew or should have known of the decision more than 21 days before filing the notice of intent to appeal. *Rebmann v. Linn County*, 21 Or LUBA 542 (1991).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a local government fails to provide the statutorily required written notice of decision to a party entitled to receive such notice, the 21 day deadline for filing an appeal with LUBA does not begin to run until the required written notice of decision is provided. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where there is no local appeal available and a local government fails to provide the notice of hearing or hearing required by ORS 227.175(3) and (5) or 215.416(3) and (5) before making a decision on a permit, such permit decisions may be appealed to LUBA within 21 days after a person receives actual notice of the permit decision. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. If the notice of hearing required by ORS 227.175(5) fails to indicate the possibility of the final action actually taken by the city, a petitioner's notice of intent to appeal to LUBA is timely if filed within 21 days after petitioner received actual notice of the decision. *Torgeson v. City of Canby*, 19 Or LUBA 623 (1990).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where a county finds applicable approval standards are or can be met and grants first stage PUD approval, but includes a condition that (1) final grading and drainage plans be submitted later, and (2) approval of such plans follow a procedure that does not provide notice or an opportunity for further public involvement, the proper way to challenge the county's decision to proceed in such a manner is to appeal the first stage PUD approval decision. Parties may not fail to challenge that decision and appeal the subsequent approval of the final grading and drainage plans, arguing that such approvals are permits subject to the notice and hearing requirements of ORS 215.416, and that their failure to “appear” or file an appeal of such approvals within 21 days is excused because of the county's failure to observe such notice and hearing requirements. *J.P. Finley & Son v. Washington County*,

19 Or LUBA 263 (1990).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. Where the petitioner was never provided the written notice to which it was entitled under ORS 227.173(3), the 21-day period for the petitioner to appeal to LUBA did not expire. *Harvard Medical Park, Ltd. v. City of Roseburg*, 19 Or LUBA 555 (1990).

27.10.1 LUBA Procedures/Rules – Time Limits – Notice of Intent to Appeal. A notice of intent to appeal mailed to LUBA within the 21 day appeal period, but received by LUBA after the 21-day appeal period expires, is not timely filed. *Oak Lodge Water District v. Clackamas County*, 18 Or LUBA 643 (1990).