

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Where a local government declines to provide the email addresses of those individuals to whom the local government sent a copy of the final decision by email, a petitioner does not fail to meet their NITA service obligation under OAR 661-010-0015(2) by not serving the NITA on those individuals. *Caldwell Farms, LLC v. City of Corvallis*, 81 Or LUBA 348 (2020).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Where LUBA issues two orders (1) providing the correct address for the local governing body’s legal counsel, (2) requiring petitioner to file an amended NITA that complies with OAR 661-010-0015(2), and (3) notifying petitioner that failure to file a compliant NITA will result in dismissal of the appeal; and where the amended NITA fails to comply with LUBA’s orders and OAR 661-010-0015(2), LUBA will dismiss the appeal. *Wendt v. City of Klamath Falls*, 81 Or LUBA 266 (2020).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Where respondent moves to dismiss an appeal, alleging that petitioner failed to serve a copy of the notice of intent to appeal on the county, and after five weeks petitioner has neither advised LUBA that a copy of the notice of intent to appeal has been served on respondent nor filed a written response to the motion to dismiss, LUBA will dismiss the appeal for lack of jurisdiction. *Mann v. Marion County*, 74 Or LUBA 73 (2016).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Where LUBA issues an order directing petitioner to file a supplemental certificate of service to establish that the notice of intent to appeal was served on the local government’s legal counsel, and petitioner fails to do so within the deadline specified in the order, petitioner’s appeal will be dismissed. *Althausen v. Clackamas County*, 55 Or LUBA 656 (2008).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Belated service of the notice of intent to appeal is a non-jurisdictional violation of LUBA’s rules that will not interfere with LUBA’s review absent a showing of prejudice to a party’s substantial rights. *Frewing v. City of Tigard*, 51 Or LUBA 834 (2006).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** While *service* of the notice to intent to appeal is jurisdictional under ORS 197.830(9), the *timing* of that service is not. *Friends of the Metolius v. Jefferson County*, 50 Or LUBA 735 (2005).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** The statutes governing review of land use decisions are *sui generis*, and caution is appropriate in extrapolating to or from other statutory contexts and the statutes and rules governing LUBA’s review. That the Oregon Supreme Court has interpreted statutes and rules governing civil appeals to require that timely service of a notice of appeal is jurisdictional does not lead to the conclusion that LUBA’s rules, which do not make timely service jurisdictional, are inconsistent with the statutes governing LUBA’s review. *Friends of the Metolius v. Jefferson County*, 50 Or LUBA 735 (2005).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** LUBA’s rules require the petitioner to timely serve a copy of the notice of intent to appeal on the respondent, and to

certify such service, but do not assign jurisdictional consequences to whether the respondent actually receives the notice. *Friends of the Metolius v. Jefferson County*, 50 Or LUBA 735 (2005).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Where petitioner mails a notice of intent to appeal on the twenty-first day after the local decision becomes final by first-class mail with a “certificate of mailing” rather than by certified or registered mail, as provided in OAR 661-010-0015(1), the notice of intent to appeal is “filed” on the date it is received by LUBA, not on the date of mailing. Where LUBA receives such a notice of intent to appeal more than 21 days after the local decision becomes final, the appeal must be dismissed. *McKnight v. City of Portland*, 48 Or LUBA 292 (2004).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** When (1) the local government’s record does not clearly show who was mailed written notice of a land use decision; (2) a petitioner asks the local government who was actually mailed written notice of the decision; and (3) the petitioner serves the notice of intent to appeal on the persons the local government states were mailed written notice of the decision, then petitioner has complied with LUBA’s rules and LUBA will not dismiss the appeal. *Copeland Sand & Gravel, Inc. v. Jackson County*, 46 Or LUBA 653 (2004).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Mail service of the notice of intent to appeal is complete on deposit in the mail. That the county did not receive the notice does not waive its obligation to file the record with LUBA, particularly when it had actual knowledge that the notice had been filed with LUBA. *Petersen v. Columbia County*, 39 Or LUBA 799 (2001).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Failure to serve a copy of the notice of intent to appeal on the applicant’s attorney in a timely manner is a technical violation of LUBA’s rules that does not require dismissal unless the substantial rights of the applicant have been prejudiced. *Mountain West Investment v. City of Silverton*, 38 Or LUBA 932 (2000).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Petitioner’s failure to serve a copy of the notice of intent to appeal on the applicant does not toll the 21-day period to intervene under ORS 197.830(6), where the applicant nonetheless received a copy of the notice and did not file a motion to intervene within 21 days of receiving the notice. *Bowlin v. Grant County*, 35 Or LUBA 776 (1998).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Service of copies of the notice of intent to appeal is a jurisdictional requirement under OAR 661-10-015(2); while late service of such notice is a technical violation that will not result in dismissal, a complete failure to provide such notice defeats LUBA’s jurisdiction. *Bruce v. City of Hillsboro*, 32 Or LUBA 382 (1997).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** The length of the notice list is irrelevant to petitioner’s obligation to comply with the service of notice requirements. *Bruce v. City of Hillsboro*, 32 Or LUBA 382 (1997).

**27.11.1 LUBA Procedures/Rules – Service – 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).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** LUBA will not grant the county's motion to dismiss based on petitioners' failure to timely serve a notice of intent to appeal on interested parties, when those parties have not moved for dismissal. *Markham v. Coos County*, 31 Or LUBA 529 (1996).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Petitioner's failure to serve a timely notice of intent to appeal on other interested and essential parties warrants dismissal of the appeal where a party establishes substantial prejudice from the delay in service. *Winner v. Multnomah County*, 30 Or LUBA 420 (1996).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Failure to serve the notice of intent to appeal on a respondent within the time required by OAR 661-10-015(2) is a technical violation of LUBA's rules, which is not grounds for dismissal unless the substantial rights of parties are prejudiced. Where the notice of intent to appeal was served on respondent, at most, two days later than required by OAR 661-10-015(2), respondent's substantial rights were not prejudiced. *Williams v. City of Philomath*, 29 Or LUBA 563 (1995).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Under OAR 661-10-075(2)(c)(B), a notice of intent to appeal is timely served if it is mailed on the same date it is filed with LUBA. *Davenport v. City of Tigard*, 23 Or LUBA 679 (1992).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** That a person is named as an applicant in both the application and the local government decision is sufficient to establish that person is an "applicant of record" entitled to service of the notice of intent to appeal under ORS 197.730(8) and, therefore, has standing to intervene under ORS 197.830(6)(b)(A). *Broetje-McLaughlin v. Clackamas County*, 21 Or LUBA 606 (1991).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** The statutory requirement to serve the notice of intent to appeal on an applicant of record is jurisdictional. However, failure to serve the notice of intent to appeal on an applicant of record within the time established by OAR 661-10-015(2) is a technical violation of LUBA's rules which is not grounds for dismissing an appeal unless the substantial rights of parties are prejudiced. *Broetje-McLaughlin v. Clackamas County*, 21 Or LUBA 606 (1991).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Failure to timely serve a copy of the notice of intent to appeal on other parties and to include proof of service of the notice of intent to appeal when the notice of intent to appeal is filed are technical violations of LUBA's rules, which will result in dismissal only where a party's substantial rights are prejudiced. *Tice v. Josephine County*, 21 Or LUBA 550 (1991).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Failure to timely serve a copy of the notice of intent to appeal on other parties is a technical violation of LUBA’s rules, which will result in dismissal only where a party’s substantial rights are prejudiced. *Rebmann v. Linn County*, 21 Or LUBA 542 (1991).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Under OAR 661-10-005, failure to serve the notice of intent to appeal on respondent within the time required by OAR 661-10-015(2) is a technical violation of LUBA’s rules which is not grounds for dismissal unless the substantial rights of parties are prejudiced. *Schellenberg v. Polk County*, 21 Or LUBA 507 (1991).

**27.11.1 LUBA Procedures/Rules – Service – Notice of Intent to Appeal.** Respondent’s right to “the speediest practicable review” is not materially affected by service of the notice of intent to appeal eight days later than required by OAR 661-10-015(2). *Schellenberg v. Polk County*, 21 Or LUBA 507 (1991).