

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where intervenors’ attorney files a notice of withdrawal as attorney, and intervenors file a notice of withdrawal indicating their intent to withdraw their response brief and from the appeal as parties, LUBA will consider intervenors withdrawn from the appeal and will not consider intervenors’ response brief. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 11 (2018).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. LUBA will deny a motion from an applicant who missed the deadline to intervene in an appeal to participate as an amicus because such participation would effectively allow that applicant to participate as an intervenor-respondent and file what is in effect a response brief to the petition for review, without meeting the statutory deadline for intervention and without payment of an intervenor fee as set out in ORS 197.830(7)(a). *VanSickle v. Klamath County*, 77 Or LUBA 588 (2018).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where LUBA issues an interlocutory order approving or denying a motion to intervene, an appeal of LUBA’s Final Opinion and Order to the Oregon Court of Appeals would allow challenge to that interlocutory order. Where the contested motion to intervene is briefed and ripe for resolution, delaying the resolution of the motion would unnecessarily prejudice the other parties, and complicate final resolution of the appeal by allowing a person LUBA has determined lacks standing to intervene to file a petition for review. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. ORS 197.830(7)(a) requires that a motion to intervene be filed within 21 days after the notice of intent to appeal is filed. Under OAR 660-010-0015(1)(b), a notice of intent to appeal is filed on the date it is mailed by registered or certified mail or the date it is received by LUBA. But OAR 660-010-0015(1)(b) does not set out two dates of filing, either of which may be relied upon as the date of filing for purposes of computing the deadline for filing a motion to intervene. Rather the rule makes the date of filing the date of mailing, if mailed by registered or certified mail, with the date of filing being the date the notice of intent to appeal is received by LUBA in all other circumstances. *Holmberg v. Deschutes County*, 76 Or LUBA 512 (2017).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where an entity named “Shepherdsfield Ministries” moves to intervene in an appeal to LUBA, but the entity fails to establish that it appeared during the proceedings below under that name, or that it has met the requirements for representational or organizational standing, the entity has not established standing to intervene. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 664 (2016).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where it is undisputed that a corporation named “Shepherdsfield Church” appeared during the proceedings below, but the motion to intervene mistakenly identifies the appearing party as “Shepherdsfield Ministries,” LUBA will allow the motion to intervene to be revised to name the correct party as long as the correction does not prejudice the substantial rights of other parties. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 664 (2016).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. The ORS 197.830(7)(a) 21-day deadline for filing a motion to intervene, which is strictly enforced, is a *filing* deadline, not

a service deadline. *Housing Land Advocates v. City of Happy Valley*, 73 Or LUBA 405 (2016).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a local government combines proceedings on two related land use matters, and a party moving to intervene in an appeal of one of the resulting land use decisions testified at the combined hearing, that party has appeared in the proceedings before the decision-maker and has standing to intervene in the appeal, even if the party's testimony did not specifically refer to the decision that was appealed. *Iyer v. Washington County*, 72 Or LUBA 491 (2015).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where an intervenor-respondent generally agrees with the decision on appeal but wishes to challenge an aspect of the decision if the decision is reversed or remanded on the petition for review, OAR 661-010-0030(7) requires that the intervenor-respondent file a cross-petition for review with a contingent assignment of error, within the same deadline that applies to petitions for review. *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Before LUBA adopted the current version of OAR 661-010-0030(7), intervenors-respondents could include contingent cross-assignments of error in their response briefs to challenge aspects of the decision on review, in the event the decision had to be remanded or reversed under the petition for review. Now, under the current version of OAR 661-010-0030(7), such contingent cross assignments of error must be included in a timely filed cross-petition for review. *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Under OAR 661-010-0050, an intervenor becomes a party to the appeal on the date the motion to intervene is filed. A petitioner seeking to extend the deadline for filing the petition for review pursuant to OAR 661-010-0067(2) must obtain the written consent of the intervenor and all parties, even if LUBA has not yet issued an order granting the motion to intervene. *Danielson Trust v. Jackson County*, 65 Or LUBA 437 (2012).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. ORS 197.830(7)(a) and OAR 661-010-0050(3) do not authorize LUBA to refund a prevailing intervenor's filing fee. *J & G Holdings LLC v. Washington County*, 63 Or LUBA 411 (2011).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where an intervenor moves to intervene only on the side of respondent, but later submits a response brief supporting the position of the respondent on some assignments of error and supporting the position of petitioner on other assignments of error, LUBA will strike the portion of intervenor's response brief that supports petitioner's assignments of error on its own motion. *Onsite Advertising Services LLC v. Washington County*, 63 Or LUBA 414 (2011).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. LUBA will deny an untimely motion to intervene pursuant to ORS 197.830(7), where the movant was timely served a copy of the notice of intent to appeal with a certificate of filing showing the date the notice was filed. That LUBA staff allegedly misinformed the movant of the date the notice was filed is not a

basis to toll the statutory deadline to intervene at ORS 197.830(7)(a). *Central Oregon Landwatch v. Jefferson County*, 62 Or LUBA 526 (2010).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. To preserve the legislative intent in requiring participants to the proceedings below to timely intervene in appeals to LUBA, LUBA has generally declined to grant amicus status to interested parties who simply missed the statutory deadline to intervene in the appeal. A significant exception is where the respondent informs LUBA that it does not intend to file a response brief, and absent amicus participation no brief responding to the petition for review would be filed at all, and LUBA would have to resolve the appeal based solely on the petition for review. *Central Oregon Landwatch v. Jefferson County*, 62 Or LUBA 530 (2010).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where the respondent indicates it intends to file a response brief, LUBA will deny a motion to appear as amicus from an interested party who failed to file a timely motion to intervene, absent a demonstration that the respondent’s brief will not adequately respond to the petition for review or otherwise that the amicus brief would significantly aid LUBA’s review. *Central Oregon Landwatch v. Jefferson County*, 62 Or LUBA 530 (2010).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. When the original applicant would be allowed to intervene in an appeal under ORS 197.830(7)(b)(A) as the “applicant who initiated the action before the local government,” the original applicant’s successor in interest may also intervene. *Biggerstaff v. Yamhill County*, 58 Or LUBA 665 (2008).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. The filing of a Notice of Intent to Appeal (NITA) is a jurisdictional prerequisite to commencing a LUBA appeal. Where all petitioners withdraw the NITA, the appeal must be dismissed. *Brown v. Jackson County*, 55 Or LUBA 178 (2007).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An agent or consultant who represented the applicants during the proceedings before the local government but is not a member of the Oregon State Bar cannot represent the applicants before LUBA. *Wetherell v. Douglas County*, 54 Or LUBA 782 (2007).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An appearance before the local government by an agent or representative of the applicants is not, in itself, an appearance by that agent or representative on his or her own behalf, for purposes of intervening under ORS 197.830(7)(b)(B). *Wetherell v. Douglas County*, 54 Or LUBA 782 (2007).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. ORS 197.830(7)(b)(B) does not specify whether intervention by the “applicant” who “initiated” the application is limited to the property owner or other person in interest, or also includes an agent or hired consultant who files an application on behalf of the property owner or person in interest. *Wetherell v. Douglas County*, 54 Or LUBA 782 (2007).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where the property owners

sign the application as the applicants, but designate their agent as the “applicant,” that designation does not mean that the agent is the “applicant who initiated the action before the local government” within the meaning of ORS 197.830(7)(b)(A), and the agent therefore does not have standing to intervene as the applicant under that statute. *Wetherell v. Douglas County*, 54 Or LUBA 782 (2007).

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

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

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

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A person who is not entitled to notice of the local government’s final decision under 197.615(2)(b) is not entitled to be served a copy of the notice of intent to appeal, or intervene in the appeal after the 21-day deadline for intervention has expired. *Herring v. Lane County*, 53 Or LUBA 608 (2007).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. LUBA will assume an applicant’s planner has standing to intervene under ORS 197.830(7)(b) on the side of the applicant-petitioner, notwithstanding the planner’s failure to allege in his unopposed motion to intervene that he was also an applicant or made an appearance on his own behalf, where there is no dispute that the petitioner has standing and both petitioner and the planner signed the petition for review. *Gillette v. Lane County*, 52 Or LUBA 1 (2006).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An intervenor company’s failure to identify itself correctly in its motion to intervene might warrant a motion to require an amended motion to intervene but it does not justify denying the motion to intervene. *O’Brien v. City of Portland*, 52 Or LUBA 113 (2006).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An applicant below who intervenes in a LUBA appeal is not precluded from participating in the appeal merely because he has sold his interest in the property. *Mazorol v. City of Bend*, 52 Or LUBA 136 (2006).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. After the petitioner withdraws from an appeal, any intervenor-petitioner who has not timely filed a separate notice of intent to appeal may not continue the appeal, and the appeal must be dismissed. *Marylhurst Neighborhood Assoc. v. City of West Linn*, 52 Or LUBA 612 (2006).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Absent failure to serve a copy of the notice of intent to appeal on parties entitled to such notice, or other sufficient reason to excuse a party's failure to comply with the 21-day deadline to intervene in ORS 197.830(7)(c), that statute requires denial of any motion to intervene filed more than 21 days after the notice of intent to appeal is filed. *Grant v. City of Depoe Bay*, 52 Or LUBA 811 (2006).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. While OAR 661-010-0067(3) provides that certain time limits may be extended upon motion of a party, that rule must be interpreted consistently with ORS 197.830(7)(c), which mandates denial of a motion to intervene filed more than 21 days after the notice of intent to appeal is filed. Accordingly, OAR 661-010-0067(3) does not authorize LUBA to grant a motion to extend the time to file the motion to intervene more than 21 days after the notice is filed. *Grant v. City of Depoe Bay*, 52 Or LUBA 811 (2006).

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

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. All petitioners who are not represented by an attorney must represent themselves in a LUBA appeal. Neither a lead petitioner nor any other individual petitioner may present arguments or file documents on behalf of other unrepresented petitioners. *Gillette v. Lane County*, 51 Or LUBA 823 (2006).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Intervenor's failure to file a motion to intervene within 21 days of the date the notice of intent to appeal (NITA) was filed does not require denial of the motion where petitioner failed to serve the NITA on intervenor, as required by OAR 661-010-0015(3)(i). *Ford v. Jackson County*, 50 Or LUBA 359 (2005).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. The ORS 197.830(7) “appearance” requirement is not satisfied and a motion to intervene will be denied where movant's request to participate in local hearing after the close of the record is denied, and movant does not argue that participation was erroneously denied. *Anthony v. Josephine County*, 50 Or LUBA 703 (2005).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Status as an intervenor is recognized from the date a motion to intervene is filed. LUBA’s general practice is to allow time for other parties to object to the motion to intervene and then rule on the motion, either in an interlocutory order or in the final opinion. *Lindsey v. Josephine County*, 50 Or LUBA 708 (2005).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A *pro se* intervenor may not file a motion on behalf of prospective unrepresented intervenors to seek additional time for filing motions to intervene. *Lindsey v. Josephine County*, 50 Or LUBA 708 (2005).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Failure to object to a motion to intervene until after the intervenor has filed a response brief and shortly before oral argument is prejudicial to the intervenor’s substantial rights and not a “technical violation” of LUBA’s rules. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Absent circumstances where delay in filing the motion to intervene is caused by the party objecting to intervention, ORS 197.830(7)(c) mandates that an untimely motion to intervene be denied. That the petitioner failed to object to the motion to intervene until after the intervenor’s brief was filed with LUBA is an insufficient basis to allow an untimely motion to intervene. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a local code provision prevents movant from testifying at a local hearing on his own behalf, presentation of oral testimony as an expert witness for a party to the local hearing does not satisfy the “appearance” requirement sufficient to allow movant to intervene at LUBA. *Doob v. Josephine County*, 49 Or LUBA 724 (2005).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. ORS 197.830(7) not only prescribes a 21-day deadline for filing a motion to intervene with LUBA, but dictates that failure to comply with that deadline shall result in denial of the motion. That the legislature chose to spell out the consequences for untimely filing of a motion to intervene indicates that the legislature wanted that deadline to be rigorously enforced and, by implication, not extended. *Grahn v. City of Newberg*, 49 Or LUBA 762 (2005).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. The principle of affirmative waiver of issues before the local decision maker described in *Newcomer v. Clackamas County*, 92 Or App 174, 758 P2d 369 (1988), does not apply to representations before LUBA, such as a respondent’s representation that it would not file a response brief. To the extent a petitioner relies on such a representation to submit an abbreviated petition for review, it does so at its own risk. LUBA. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 799 (2004).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A county is by statute and rule a party to an appeal of a county land use decision to LUBA, and nothing prohibits a county from indirectly representing the interests of others, such as an applicant who failed to file a timely motion to intervene, in exercising the county’s right to defend its decision before LUBA. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 799 (2004).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Consolidation of separate appeals under LUBA’s rules is a matter of administrative convenience for the parties and the Board, and does not affect the legal relations of the parties to each other or to the matters appealed. Consolidation of two appeals does not permit a person who is a petitioner in one appeal to file a response brief in the other appeal, absent filing a timely motion to intervene on the side of respondent in that other appeal. *Leach v. Lane County*, 45 Or LUBA 733 (2003).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A member of the local governing body who adopted a land use decision is not a person who “appeared” before the local governing body and may not intervene as a party in a LUBA appeal. *Roe v. City of Union*, 45 Or LUBA 736 (2003).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A party attempting to intervene in a LUBA appeal need only have appeared before the local government and file a timely motion to intervene with LUBA. Unlike petitioners before LUBA, there is no requirement that intervenors have exhausted all administrative remedies below. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. LUBA will not deny an otherwise proper motion to intervene simply because the moving party’s interests may be represented by other parties. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A motion to intervene filed by an unrepresented organization, stating that the organization will soon be represented by an attorney, will be denied where no attorney appears on behalf of the organization and the organization fails to respond to a challenge to its status as intervenor. *Stahl v. Tillamook County*, 43 Or LUBA 623 (2002).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A technically deficient motion to intervene is sufficient to satisfy the 21-day deadline of ORS 197.830(7)(a) when an acceptable motion to intervene is subsequently filed and there is no prejudice to other parties’ substantial rights. *Griffin v. Jackson County*, 40 Or LUBA 584 (2001).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An amended motion to intervene that attempts to add an intervenor will not be granted as to that additional intervenor, absent some argument that the additional intervenor was prevented from independently intervening in the appeal within the statutory deadline. *Griffin v. Jackson County*, 40 Or LUBA 584 (2001).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Petitioners are entitled to rely on a Board order extending the time to file a petition for review, notwithstanding that the order was issued without the written agreement of all parties, where no party’s substantial rights are prejudiced by the extension of time. *Ballou v. Douglas County*, 40 Or LUBA 573 (2001).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. LUBA’s rules do not require that we automatically provide copies of all pleadings and orders that were filed and issued

before a party's motion to intervene is received. *Pereira v. Columbia County*, 39 Or LUBA 760 (2001).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a motion to intervene has been filed and served but not yet received by LUBA and the parties, and an order extending the deadline for filing the petition for review is entered based on the mistaken understanding that all parties consent to the extension, the intervening party may thereafter object to the extension and is entitled to have the original deadline for filing the petition for review reestablished, if that can be done without prejudicing petitioner's substantial right to rely on the deadline that was established in the order. *Pereira v. Columbia County*, 39 Or LUBA 760 (2001).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Persons who appeared during local proceedings may intervene in a LUBA appeal on the side of respondent without demonstrating that the appeal will result in any actual damage or harm. *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. When an intervening party is aware that the record has been filed, but fails to obtain a copy of the record in time to object and does not demonstrate why such a failure justifies a further delay in the appeal, untimely objections to the record will be rejected. *Mountain West Investment v. City of Silverton*, 38 Or LUBA 938 (2000).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Failure to file a notice to intervene within the 21-day period prescribed by ORS 197.830(7) does not require that intervention be denied where the petitioner did not serve the notice of intent to appeal on intervenor until 53 days after the notice was filed with LUBA. *Mountain West Investment v. City of Silverton*, 38 Or LUBA 932 (2000).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where the local government mailed a copy of the decision to the applicant, and petitioners timely served a notice of intent to appeal on the applicant, the fact that the applicant's attorney did not receive a copy of either the decision or the notice of intent to appeal does not allow the applicant to file his motion to intervene beyond the 21-day deadline imposed by ORS 197.830(6). *Slusser v. Polk County*, 37 Or LUBA 1062 (2000).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where proceedings are pending before a lower body, a decision of the governing body to decline review of the lower body's decision in advance of that lower body's decision either (1) is not properly viewed as a separate land use decision, making a separate appearance by intervenors unnecessary, or (2) is so integral to the permit decision, that appearing before the planning commission satisfies the ORS 197.830(6) (1997) appearance requirement. *SBA Towers, Inc. v. Linn County*, 37 Or LUBA 1049 (2000).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. ORS 197.830(6)(b)(A) permits an applicant to intervene in proceedings before LUBA even if the applicant did not appear below, so long as the motion to intervene is filed within 21 days of the date the notice of intent to

appeal is filed. *Dowrie v. Benton County*, 37 Or LUBA 998 (1999).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A motion to extend the deadline for filing a petition for review cannot be granted under OAR 661-010-0067(2) unless all parties, including intervenors, consent to the requested extension. *Bauer v. City of Portland*, 37 Or LUBA 489 (2000).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A motion to intervene is not timely filed where the person seeking to intervene files the original motion to intervene with LUBA more than 21 days from the date the notice of intent to appeal is filed, notwithstanding that that person served copies of that motion on the petitioner and the local government within the 21-day period. *Tylka v. Clackamas County*, 36 Or LUBA 801 (1999).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where intervenor's initial request to intervene does not comply with LUBA's rules, but intervenor then files an amended motion to intervene which complies with LUBA's procedural requirements within five days of receiving notice of the technical violations, and a party opposing the intervention fails to show how that delay caused substantial prejudice, LUBA will allow intervenor to appear. *Plotkin v. Washington County*, 36 Or LUBA 378 (1999).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. 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).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a person moving to intervene did not appear during local proceedings but attempts to excuse the failure to appear based on the local government's failure to provide notice, the person moving to intervene must establish that she had a right to notice. *Columbia Hills Development Co. v. Columbia County*, 35 Or LUBA 737 (1998).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A motion to intervene that is filed by mail within 21 days after the notice of intent to appeal is filed is timely filed under ORS 197.830(6), notwithstanding that the motion to intervene is not received by LUBA until 27 days after the notice of intent to appeal is filed. *Marshall v. City of Yachats*, 35 Or LUBA 82 (1998).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. ORS 197.830(6) requires a person moving to intervene in an appeal at LUBA to have appeared below. There is no statute analogous to ORS 197.830(3) that waives the appearance requirement for potential intervenors where the local government fails to conduct a hearing. *Dornan v. Yamhill County*, 34 Or LUBA 747 (1998).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. 1997 legislative amendments to ORS 197.830(6)(a) require that any person, including the applicant, who seeks to intervene in a LUBA appeal must file a motion to intervene within 21 days of the date the notice

of intent to appeal is filed, notwithstanding exceptions at ORS 197.830(6)(b) that exempt applicants from the appearance requirement. *Wolverton v. Crook County*, 34 Or LUBA 515 (1998).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Amendments to ORS 197.830(6) that shorten the statutory deadline for filing a motion to intervene in a LUBA appeal impair the existing right to participate in an appeal. Thus, the statute applies prospectively in the absence of an expression of legislative intent to the contrary. *Gutoski v. Lane County*, 33 Or LUBA 866 (1997).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An appeal will be dismissed where petitioner failed to “appear” below and therefore lacks standing to appeal to LUBA. In that circumstance, the LUBA appeal will be dismissed notwithstanding the intervention as a petitioner of a party who did appear below, where that intervenor-petitioner did not also file his own timely notice of intent to appeal. *Waters v. Marion County*, 33 Or LUBA 751 (1997).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Although intervenor did not file a motion to intervene as soon as practicable after the notice of intent to appeal, the motion to intervene will be allowed where petitioners did not object to the delayed briefing schedule or argue that their substantial rights were affected by the delay. *Roberts v. Crook County*, 33 Or LUBA 267 (1997).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Failure to file a motion to intervene on the side of respondent “as soon as practicable after the notice of intent to appeal is filed,” as required by OAR 661-10-050(2), is a technical violation of LUBA’s rules that does not affect the parties’ substantial rights, if intervenors’ response brief is timely filed and the appeal is not delayed due to the filing of the motion to intervene. *Testa v. Clackamas County*, 29 Or LUBA 577 (1995).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. It is not necessary for a party who filed a motion to intervene before a decision was withdrawn for reconsideration to refile its motion to intervene, or file a second motion to intervene, if an original notice of intent to appeal is refiled, or an amended notice of intent to appeal is filed, after the decision on reconsideration is filed with LUBA. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An appearance by a person before a local government on behalf of an artificial entity does not, of itself, constitute an appearance on behalf of each individual member of that entity. *Ramsey v. City of Portland*, 28 Or LUBA 763 (1994).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. If a person moving to intervene in a LUBA appeal does not contend (1) the local government failed to follow statutorily required procedures in making the challenged decision and such failure prevented movant from being able to appear below, or (2) the local government improperly refused to allow movant to appear below, the appearance requirement of ORS 197.830(6)(b) is not obviated. *Ramsey v. City of Portland*, 28 Or LUBA 763 (1994).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a motion to intervene is challenged, the motion will be denied if the movant does not support the motion with an affidavit, record citations or other proof establishing the movant’s right to intervene, as required by OAR 661-10-050(2)(b). *Noble v. City of Fairview*, 28 Or LUBA 711 (1994).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Being the owner of the property that is the subject of a LUBA appeal proceeding does not automatically establish that person’s standing to intervene. *Noble v. City of Fairview*, 28 Or LUBA 711 (1994).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A respondent or intervenor-respondent wishing to challenge some aspect of a land use decision in a LUBA appeal must either file a timely cross-petition for review or file a separate appeal. Cross assignments of error may not be included in a respondent’s brief. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a movant’s standing to intervene is challenged and a movant fails to support the motion to intervene “with affidavits, citations to the record or other proof,” as required by OAR 661-10-050(2)(b), the motion to intervene will be denied. *Brentmar v. Jackson County*, 26 Or LUBA 651 (1994).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. LUBA’s rules require that artificial persons such as special districts appear in LUBA appeals through an attorney. Where a motion to intervene is filed on behalf of a special district by a person who is not an attorney, the motion will be denied. *Sanchez v. Clatsop County*, 26 Or LUBA 631 (1994).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a local government refused to allow a person to appear during the proceedings below, that person has standing to intervene in a LUBA appeal to challenge the local government’s determination that he not be allowed to appear. However, if the person does not successfully challenge the local government’s refusal to allow an appearance below, his motion to intervene will be denied. *McKenzie v. Multnomah County*, 26 Or LUBA 619 (1993).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. That a person moving to intervene in an appeal at LUBA failed to object to a local government’s decision not to allow that person to present testimony is not fatal to that person’s assertion of standing to intervene, where two other persons objected below to the local government’s decision to limit testimony. *Sorte v. City of Newport*, 25 Or LUBA 828 (1993).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a local government denies a person the right to present testimony on her own behalf, that person “appeared” within the meaning of ORS 197.830(6) and OAR 661-10-050(1), at least for the purpose of challenging the local government’s decision to limit testimony. *Sorte v. City of Newport*, 25 Or LUBA 828 (1993).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An intervenor-respondent’s delay in filing a motion to intervene does not prejudice the rights of any party and

provides no basis for denying the motion to intervene, where the appeal proceedings are suspended by a pending motion for evidentiary hearing and the time for filing the respondents' briefs has not yet expired. *Louisiana Pacific v. Umatilla County*, 25 Or LUBA 816 (1993).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. OAR 661-10-075(3) allows both respondents and intervenors-respondent to file cross petitions for review. Cross petitions for review are not limited to the issues raised in petitioners' petition for review; any appropriate issue may be raised. *Reusser v. Washington County*, 24 Or LUBA 652 (1993).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where LUBA has granted a motion to intervene, and LUBA's final decision is subsequently remanded by the appellate courts, the intervenor does not lose its party status in the proceeding before LUBA on remand simply because it did not participate as a party in the appellate court proceedings. *Columbia Steel Castings Co. v. City of Portland*, 24 Or LUBA 640 (1993).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a challenged decision does not purport to amend an acknowledged plan or land use regulation, the requirement of ORS 197.610(1) for notice to DLCDD of a proposed post-acknowledgment amendment is not applicable. In such circumstances, a local government's failure to give DLCDD the notice required by ORS 197.610(1) does not obviate the appearance requirement of ORS 197.830(6)(b) for intervention by DLCDD in an appeal before LUBA. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. The requirement of ORS 197.830(6)(b) that a person wishing to intervene in an appeal at LUBA have appeared during the local government proceedings is obviated where a city fails to observe statutory notice and hearing requirements of ORS 227.173 and 227.175 prior to issuing the challenged decision granting approval for a permit. *Hood River Sand v. City of Mosier*, 24 Or LUBA 604 (1992).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. An allegation that an intervenor failed to appear in the proceedings below cannot be resolved until the content of the record of the proceedings below is known. Therefore, a motion to deny intervention based on a failure to appear below, which is filed prior to the settling of the local record, is not untimely. *Terra v. City of Newport*, 24 Or LUBA 579 (1992).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a motion to intervene and intervenors' response brief were filed six days after respondents' briefs were due and were received by petitioners one week before oral argument, and intervenors' brief does not raise new issues warranting the filing of a reply brief, petitioners' substantial right to prepare and submit their case was not prejudiced by the untimely filing. *Alliance for Resp. Land Use v. Deschutes County*, 23 Or LUBA 476 (1992).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a motion to intervene is filed three months after the notice of intent to appeal, with no explanation for why the motion was not filed earlier, the motion to intervene is not filed "as soon as practicable after the Notice of Intent to Appeal is filed," as required by OAR 661-10-050(2). *Rhyne v. Multnomah*

County, 23 Or LUBA 703 (1992).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. OAR 661-10-050(3)(b) requires that intervenors-respondent file their brief within the time provided for filing the respondent’s brief. Where the time for filing the respondent’s brief is extended beyond the 42-day deadline established by OAR 661-10-035, intervenors-respondent are entitled to the same extension under OAR 661-10-050(3)(b). *Rhyne v. Multnomah County*, 23 Or LUBA 703 (1992).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where intervenors’ delay in filing their motion to intervene and brief results in no delay of the appeal and no prejudice to petitioners’ substantial rights, the failures to file a timely motion to intervene and brief are technical violations of LUBA’s rules and provide no basis for denying the requested intervention. *Rhyne v. Multnomah County*, 23 Or LUBA 703 (1992).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where a county has never entered into any cooperative agreements with special districts pursuant to ORS 197.185(2), what such a cooperative agreement might contain is entirely speculative and, therefore, the lack of such an agreement between the county and a district does not render inapplicable the ORS 197.830(6)(b)(B) “appearance” requirement for intervention in an appeal of a district decision. *Adkins v. Heceta Water District*, 22 Or LUBA 840 (1992).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. If no petition for review has yet been filed with LUBA, a motion to intervene is not untimely under ORS 197.830(6)(a). *Ramsey v. City of Portland*, 22 Or LUBA 295 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Filing a motion to intervene within one month of receiving a copy of the notice of intent to appeal and within one week of transmittal of the local record to LUBA complies with the requirement of OAR 661-10-050(2) that a motion to intervene be filed “as soon as is practicable.” *Ramsey v. City of Portland*, 22 Or LUBA 295 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Failure to file a motion to intervene “as soon as is practicable after the Notice of Intent to Appeal is filed,” is a technical violation of LUBA’s rules and does not affect LUBA’s review unless the filing of the motion itself delays the review proceeding or denies the other parties a reasonable time to prepare and submit their cases or a fair hearing. *Ramsey v. City of Portland*, 22 Or LUBA 295 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Under OAR 661-10-050(1), an intervenor becomes a party to the appeal proceeding before LUBA when the motion to intervene is filed. *Ramsey v. City of Portland*, 22 Or LUBA 295 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where no local hearings are conducted and no notice of the proceeding is provided, it is not possible to appear before the local decision maker and, consequently, it is unnecessary for a potential intervenor to have “appeared” below, as required by ORS 197.830(6)(b), to have standing to intervene in an appeal to LUBA. *Weeks v. City of Tillamook*, 22 Or LUBA 797 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. 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).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Neither statutes nor LUBA rules establish an exact deadline for filing a motion to intervene. A motion to intervene filed four days after the respondent’s brief is filed is not untimely where the movant is an applicant of record who was not served with the notice of intent to appeal as required by ORS 197.830(8). *Broetje-McLaughlin v. Clackamas County*, 21 Or LUBA 606 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. LUBA will not consider letters from intervenors-petitioner which “support” the petitioners’ petition for review, but do not comply with the requirements of LUBA’s rules for an intervenor-petitioner’s brief. *Gray v. Clatsop County*, 21 Or LUBA 600 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A letter stating an intervenor-petitioner “adopts” another party’s petition for review as its own brief can satisfy the requirements of OAR 661-10-050(3)(a) for filing an intervenor-petitioner’s brief, if (1) the “adopted” petition for review is properly filed, and (2) the intervenor-petitioner’s letter is timely filed and served on the other parties. *Gray v. Clatsop County*, 21 Or LUBA 600 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A motion to intervene, filed along with the intervenor-respondent’s brief on the last day for filing a respondent’s brief, will be allowed where there is no prejudice to petitioner caused by the delay in moving to intervene. *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A department of local government may be recognized as an “applicant” for purposes of acquiring the right to intervene in an appeal proceeding before LUBA under ORS 197.830(6)(b)(A). *Choban v. Washington County*, 20 Or LUBA 508 (1990).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. A motion to intervene in a LUBA proceeding which is filed five months after the notice of intent to appeal was filed is untimely under OAR 661-10-050(2). If the movant’s brief is not filed until two days after oral argument, providing the other parties an opportunity to respond to that brief would delay the issuance of LUBA’s final opinion. Under these circumstances, the tardy filing of the motion to intervene is not an excusable technical violation of LUBA’s rules under OAR 661-10-005. *Beck v. City of Tillamook*, 20 Or LUBA 178 (1990).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Where the movant’s participation below was limited to his role as a decision maker, such participation is not sufficient to constitute an appearance before the local government, and LUBA will deny the motion to intervene. *Cecil v. City of Jacksonville*, 19 Or LUBA 446 (1990).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Petitioner’s motion to deny intervenor status, filed four days after a LUBA order determining the content of the local record was issued, is timely because, regardless of when a motion to intervene is filed, failure of the movant to participate in the proceedings below cannot be determined until it is known what the local record includes. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 537 (1990).

27.7.3 LUBA Procedures/Rules – Parties – Intervenor/Participant. Even if a motion to intervene is not filed “as soon as is practicable after the Notice of Intent to Appeal is filed,” as required by OAR 661-10-050(2), it will be granted if allowing intervention will not affect the briefing schedule or delay issuance of LUBA’s final opinion. OAR 661-10-005. *Columbia Steel Castings Co. v. City of Portland*, 19 Or LUBA 479