

**25.9 Local Government Procedures – Formalities of Decisions.** ORS 197.015(10)(b)(H) is silent regarding what procedures a local government may apply to a request for a land use compatibility statement (LUCS). LUBA’s conclusion that a LUCS decision is excluded from LUBA’s jurisdiction does not mean that the county lacked “land use jurisdiction” to process the LUCS request pursuant to land use procedures that provide for local appeal. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

**25.9 Local Government Procedures – Formalities of Decisions.** A city errs when it accepts an appeal of a decision to deny a permit, holds an appeal hearing, and fails to issue a written decision on the appeal. ORS 227.173(3) requires the city to issue a written decision. *Smith v. City of Gearhart*, 71 Or LUBA 184 (2015).

**25.9 Local Government Procedures – Formalities of Decisions.** That a planning staff decision is initialed but not signed, and does not take the form of an “order,” does not render that decision void or otherwise constitute reversible error, where the petitioner does not identify any code provision or other authority that requires a planning staff decision to take the form of a signed order. *Kane v. City of Beaverton*, 64 Or LUBA 351 (2011).

**25.9 Local Government Procedures – Formalities of Decisions.** That a planning commission deliberated only briefly in making a land use decision does not violate ORS 192.620, which states a policy that the “Oregon form of government requires an informed public aware of deliberations and decisions by governing bodies[.]” Assuming ORS 192.620 applies to a planning commission decision, the statute does not require deliberations of any particular duration or quality. *Broderson v. City of Ashland*, 62 Or LUBA 329 (2010).

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

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**25.9 Local Government Procedures – Formalities of Decisions.** An alleged inconsistency between the oral decision by the governing body and the final written decision signed on the governing body’s behalf by the planning director is at most harmless error and is not itself a basis for remand, where the governing body’s decision must be remanded for additional findings in any case, and the decision on remand will

supersede the challenged decision, rendering any error moot. *O'Rourke v. Union County*, 54 Or LUBA 614 (2007).

**25.9 Local Government Procedures - Formalities of Decisions.** A member of the governing body, who was absent from the meeting at which a land use application was orally approved, but who otherwise participated throughout the local proceedings, may properly sign the final written decision. *Sommer v. Josephine County*, 49 Or LUBA 134 (2005).

**25.9 Local Government Procedures – Formalities of Decisions.** City planning staff cannot informally modify or void two earlier final, written decisions issued pursuant to code-required procedures that altered the deadlines for filing a final plat approval application. At a minimum, modification or revocation of those final, written decisions to restore the original deadline must be accomplished by a final, written decision. *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282 (2004).

**25.9 Local Government Procedures – Formalities of Decisions.** A final, written decision that effectively, if implicitly, restores the original deadline for filing the final subdivision plat application, and then extends that deadline, is properly viewed as a modification or revocation of an earlier decision that places the tentative plat approval on inactive status, subject to a different final plat application deadline. *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282 (2004).

**25.9 Local Government Procedures – Formalities of Decisions** A petitioner's substantial rights include the right to a final written decision by the final decision maker on petitioner's local appeal. An allegation that the city council failed to adopt a final written decision on petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

**25.9 Local Government Procedures – Formalities of Decisions.** A notice of decision and a set of findings drafted by the city planning director are not part of the city council's final decision, where the documents are not signed or approved by the city council, and nothing in the record indicates that the city council adopted or otherwise incorporated those documents into its decision. petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

**25.9 Local Government Procedures – Formalities of Decisions.** Once a planning commission decision is appealed to the city council, the planning commission decision cannot become the city's final decision on the application, although it may be adopted or incorporated as part of the city council's final decision. petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

**25.9 Local Government Procedures – Formalities of Decisions.** Where a city council fails to adopt any document as its written decision on a local appeal, the city council action as reflected in minutes adopted by the city council may constitute the city

council's final written decision on the appeal, although defects or inadequacies that flow from adopting a written decision in that form may be a basis for reversal or remand. petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

**25.9 Local Government Procedures – Formalities of Decisions.** A city council decision approving a subdivision with modifications for required road access must be remanded where it is unclear which documents if any the city council adopted as part of its decision, and the city council decision includes no findings explaining the modification, or reducing the required road access to a condition of approval. petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

**25.9 Local Government Procedures – Formalities of Decisions.** In an appeal to LUBA of a county decision that a 6.67-acre portion of a 10-acre parcel is not a legally created developable parcel, preclusive legal effect need not be given to separate 1989 and 1993 decisions recognizing the legality of the remaining 3.33-acre parcel, where the 1989 decision was essentially no more than the county's acquiescence to the property owner's desire to have the property recognized as a separate parcel and the 1993 decision includes a finding that the decision maker was bound by the 1989 decision. *DeBoer v. Jackson County*, 43 Or LUBA 219 (2002).

**25.9 Local Government Procedures – Formalities of Decisions.** Draft minutes that are prepared after a notice of a land use decision has been mailed and the 21-day deadline for filing appeals at LUBA has ended may not be used by a local government as the written final decision. *Martin v. City of Dunes City*, 43 Or LUBA 354 (2002).

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

**25.9 Local Government Procedures – Formalities of Decisions.** The practice of incorporating other documents as findings runs the risk of adopting inconsistent findings. However, where a decision expressly incorporates other documents as findings, such an express incorporation is sufficient to adopt the other document as findings. *Hannah v. City of Eugene*, 35 Or LUBA 1 (1998).

**25.9 Local Government Procedures – Formalities of Decisions.** Where more than one site plan appears in the record, a local government errs if its decision does not adequately identify which site plan is approved. *Brown v. City of Portland*, 33 Or LUBA 700 (1997).

**25.9 Local Government Procedures – Formalities of Decisions.** For purposes of ORS 215.428(1), a decision is not "final" at the time the oral decision is made where the local code provides the decision becomes final 10 days after the written decision is filed unless the county board grants a rehearing on its own motion. *Miller v. Multnomah County*, 33 Or LUBA 644 (1997).

**25.9 Local Government Procedures – Formalities of Decisions.** Backdating of a final written decision to correspond to the date of an earlier oral decision denying an application does not constitute an action taken to avoid the 120-day rule established by

ORS 215.428, within the meaning of ORS 197.835(10)(a)(B), when the denial was made on the merits and not for the purpose of avoiding the 120-day rule. *Miller v. Multnomah County*, 33 Or LUBA 644 (1997).

**25.9 Local Government Procedures – Formalities of Decisions.** 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).

**25.9 Local Government Procedures – Formalities of Decisions.** Erroneous information provided by the county to the petitioner does not change the date upon which a decision becomes final. *Friends of Yamhill County v. Yamhill County*, 33 Or LUBA 530 (1997).

**25.9 Local Government Procedures – Formalities of Decisions.** 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).

**25.9 Local Government Procedures – Formalities of Decisions.** The failure of a city council expressly to consider denial of an application is not a basis for reversal or remand when the city council concluded the record supported approval. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).

**25.9 Local Government Procedures – Formalities of Decisions.** While a local government can make a de facto land use decision without satisfying procedural or substantive requirements for a land use decision, a county does not make a de facto land use decision by merely acquiescing to a property owner's desired characterization of his property. *Higgins v. Marion County*, 30 Or LUBA 426 (1996).

**25.9 Local Government Procedures – Formalities of Decisions.** Under OAR 661-10-010(3), a document containing findings of fact and conclusions of law that is signed by the mayor and attested by the city recorder is a final decision, but if the city has no authority to take the action reflected in the decision, the final decision is not a land use decision. Subsequent adoption with authority is a land use decision appealable to LUBA. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

**25.9 Local Government Procedures – Formalities of Decisions.** Where the challenged decision is that of the governing body, made on appeal from a planning commission decision, allegations of procedural error in the manner in which the planning commission adopted its order and findings do not provide a basis for reversal or remand. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

**25.9 Local Government Procedures – Formalities of Decisions.** Because petitioners do not have a right to seek a referendum on a quasi-judicial land use decision, a local

government error in adopting such a decision as an emergency ordinance provides no basis for reversal or remand. *Neuman v. City of Albany*, 28 Or LUBA 337 (1994).

**25.9 Local Government Procedures – Formalities of Decisions.** Where a local code provides that a planning commission decision becomes final ten days after "submittal" of the written decision to the clerk of the governing body, the local government is not clearly wrong in interpreting "submittal" to the clerk to mean "receipt" by the clerk, and its interpretation will be sustained. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

**25.9 Local Government Procedures – Formalities of Decisions.** That a local government's final written order may not accurately reflect oral comments made by the local decision maker during its deliberations provides no basis for reversal or remand of a challenged decision. *Barrick v. City of Salem*, 27 Or LUBA 417 (1994).

**25.9 Local Government Procedures – Formalities of Decisions.** ORS 197.190(1) and 268.285(1) both require that a Metropolitan Service District decision to coordinate be an action taken "through its governing body." Where the product of a Metro sponsored mediation is not formally adopted by the Metro governing body, it does not constitute an exercise of Metro's coordination obligation under those statutes. *City of Portland v. Washington County*, 27 Or LUBA 176 (1994).

**25.9 Local Government Procedures – Formalities of Decisions.** That a stipulation concerning the applicability of a local government's land use regulations to certain property is entered into by the local government and a property owner outside the confines of a land use proceeding and without following the procedures required for land use decision making does not make the decision any less a land use decision. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

**25.9 Local Government Procedures – Formalities of Decisions.** Where a local governing body has not adopted regulations providing for reconsideration of its decisions, the governing body commits no error by denying a request to reconsider a decision, where the request was received after the final written order is entered. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

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

**25.9 Local Government Procedures – Formalities of Decisions.** LUBA reviews the local government's final written order. That the final written order may not accurately reflect oral comments made by the local decision maker during its deliberations provides no basis for reversal or remand of the challenged decision. *Derry v. Douglas County*, 26 Or LUBA 25 (1993).

**25.9 Local Government Procedures – Formalities of Decisions.** It is a local government's final written decision that is subject to LUBA's review. That conditions imposed in the local government's final written decision were not discussed in the decision maker's deliberations does not provide a basis for reversal or remand. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

**25.9 Local Government Procedures – Formalities of Decisions.** In determining the nature and scope of the challenged decision, the language of (1) a prior and related determination, (2) an earlier major partition application pertaining to the subject land, and (3) the challenged decision itself, are instructive. *Woosley v. Marion County*, 24 Or LUBA 231 (1992).

**25.9 Local Government Procedures – Formalities of Decisions.** Where nothing in the caption, findings or decision itself suggests that the challenged decision approves a lot line adjustment, a lot line adjustment was not approved. *Barker v. City of Cannon Beach*, 24 Or LUBA 221 (1992).

**25.9 Local Government Procedures – Formalities of Decisions.** Alleged errors in the manner in which the findings of a lower level local decision maker were adopted, are harmless if the final decision was properly adopted by the final decision maker. *Rath v. Hood River County*, 23 Or LUBA 200 (1992).

**25.9 Local Government Procedures – Formalities of Decisions.** Where a challenged decision defers consideration of certain code mandatory approval standards until a later stage, but fails to provide that such later stage will include the full opportunity for public involvement provided at the initial stage, and where nothing in the local code requires such opportunity to be provided in any subsequent proceedings, the decision to defer consideration of such mandatory standards constitutes a basis for remand of the challenged decision. *Citizens for Resp. Growth v. City of Seaside*, 23 Or LUBA 100 (1992).

**25.9 Local Government Procedures – Formalities of Decisions.** There is no prohibition against a local government making a tentative oral decision on a permit application, followed by adoption of a final written decision containing its supporting findings. *Citizens for Resp. Growth v. City of Seaside*, 23 Or LUBA 100 (1992).

**25.9 Local Government Procedures – Formalities of Decisions.** LUBA reviews the decision maker's final written decision, not statements made during the proceedings leading to adoption of the challenged decision. Such statements are preliminary and subject to change in the final decision. *Toth v. Curry County*, 22 Or LUBA 488 (1991).

**25.9 Local Government Procedures – Formalities of Decisions.** A statement in the challenged decision that all oral and written information received during the local proceedings are "incorporate[d] by reference" is not sufficiently specific to adopt particular documents in the local record as findings in support of the decision. *Cecil v. City of Jacksonville*, 19 Or LUBA 446 (1990).