

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A county does not commit error in approving a reduced minimum lot or parcel size in a portion of its exclusive farm use zone simply because it did not require the applicant to supply an accurate map of the affected area, where the record includes an accurate metes and bounds description of the affected area and an assessors map that shows the affected tax lots. *Thompson v. Umatilla County*, 54 Or LUBA 531 (2007).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. ORS 215.750 does not prohibit a local government from applying a local code provision requiring an applicant for a forest template dwelling to demonstrate that the dwelling is “necessary for and accessory to” the forest use. *Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007).

25.4.1 Local Government Procedures - Compliance with Local Ordinances/Regs - Generally. Where petitioner does not challenge a city’s findings that invoke a development code provision that allows the city community development director to change the review procedure that would otherwise apply where there is a “compelling public interest,” LUBA will deny an assignment of error that challenges the community development director’s decision to apply a different procedure that causes an appeal to go directly to the city council rather than to the planning commission. The development code provision need not be interpreted to prohibit a change the applicable review procedure after the city’s deliberations on an application have begun. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (2007).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. LUBA will reject a petitioner’s argument that a city adjustment committee erred by failing to find that the zoning of a property reverted to its prior zoning because a rezoning condition of approval was violated, where petitioner fails to cite any authority to contradict the city’s position that the adjustment committee lacks authority to question the zoning shown on the city’s official zoning map. *O’Brien v. City of Portland*, 52 Or LUBA 113 (2006).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Any prejudice to petitioners’ substantial rights that might have resulted from late filing of a staff report and late evidentiary submissions prior to a final hearing was avoided by providing petitioners an opportunity to submit additional evidence and testimony after that hearing. *McCulloh v. City of Jacksonville*, 46 Or LUBA 267 (2004).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A local government may defer a determination that an application to site a dwelling in a forest zone complies with certain siting criteria, provided the local government allows petitioner and other interested parties an opportunity to participate in the proceedings where that determination is made. *Hodge Oregon Properties, LLC v. Lincoln County*, 46 Or LUBA 290 (2004).

25.4.1 Local Government Procedures - Compliance with Local Ordinances/Regs - Generally. Where a local code neither expressly authorizes a city council on appeal to reconsider a city's engineer's assessment of a traffic impact report and needed transportation improvements nor expressly prohibits such reconsideration, LUBA will defer to the city council's interpretation of the local code to allow reconsideration of the adequacy of the engineer's assessment. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A planning commission is not precluded from voting on a new motion to approve a conditional use permit when the first motion fails, where applicable procedures do not prohibit the planning commission from making and voting on a new motion. *Gumtow-Farrior v. Crook County*, 45 Or LUBA 612 (2003).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A city subarea plan that includes policies that may affect land development outside that subarea's boundaries does not violate a city code provision that limits the applicability of subarea development regulations to that subarea alone. *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Where a city code provision regarding the siting of a telecommunication tower does not require a showing that a particular tower height at a specific location is the only way an applicant for the telecommunication tower can achieve its coverage objectives, a city decision that does not require an alternatives analysis is not inadequate, in the absence of evidence that feasible alternatives exist. *Johnson v. City of Eugene*, 42 Or LUBA 353.

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. In applying a zoning code process that permits ministerial correction of zoning maps to conform to the map or legal description that was adopted by or referenced in the enacting ordinance, the first step is to locate the relevant map or legal description, and the second step is to determine whether a nondiscretionary correction is possible based on that map or legal description. *6710 LLC v. City of Portland*, 40 Or LUBA 389 (2001).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A city decision to approve a one-story building addition rather than a two-story addition will be affirmed where the petitioner fails to demonstrate that general comprehensive plan policies that advocate a compact urban form (1) apply to the challenged application, and (2) are violated by the city's decision. *Thompson v. City of Ashland*, 40 Or LUBA 298 (2001).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A letter that is addressed to and received by a local decision maker may not be omitted from the record of a variance proceeding because the letter did not specifically include a request that it be included in the local record, where there is no local code

requirement that the letter include such a specific request and it is obvious that the letter concerns the requested variance. *Reagan v. City of Oregon City*, 39 Or LUBA 738 (2000).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A city does not err in failing to provide a local appeal of a design review decision under design review procedures, where the subject property is within an historic district and the city’s code specifies that design review proposals in historic districts are governed by historic design procedures that provide no right of local appeal. *Multi-Light Sign Co. v. City of Portland*, 39 Or LUBA 605 (2001).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. An assignment of error that a city erred by approving a floodplain permit in the absence of a valid conditional use permit for the proposed use provides no basis for reversal or remand where petitioner fails to demonstrate that a conditional use permit for the proposed use must be obtained prior to obtaining a floodplain permit. *Willhoft v. City of Gold Beach*, 39 Or LUBA 353 (2001).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. After a city has approved a permit application, the city may not apply code provisions to require that development occur within a particular time frame when the permit was initially approved without the application of those code provisions, and the city’s past practice did not include the imposition of the development deadlines contained in those code provisions. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 193 (2000).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A county has authority or jurisdiction to deny a permit application on its merits, where the permit applicant fails to demonstrate he was authorized to submit the permit application but the code limitations on who can submit permit applications do not impose a “jurisdictional” requirement. *Base Enterprises, Inc. v. Clackamas County*, 38 Or LUBA 614 (2000).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Where a local plan provision requires that the local government enter into a memorandum of understanding with a neighboring municipality, that requirement is not satisfied by the local government’s determination that a letter from the municipality is the equivalent of a memorandum of understanding, where the letter does not address the plan policy’s requirements, is not signed by both governments, and does not set out what the parties mutually agreed to. *Cedar Mill Creek Corr. Comm. v. Washington County*, 38 Or LUBA 333 (2000).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Unless a local code *requires* the governing body to remand a decision to the planning commission if it finds that the decision is unsupported by findings, the governing body’s decision to modify the planning commission’s decision rather than

remand it provides no basis for reversal or remand. *Dutchuk v. City of Prineville*, 38 Or LUBA 323 (2000).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A local government is not required to adopt conditions of approval for a conditional use permit that replicate conditions of approval for a tentative subdivision plat that covers a portion of the same property. *Dutchuk v. City of Prineville*, 38 Or LUBA 323 (2000).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. When the scope of a “planning action,” as that term is used in the city’s code, is uncertain and subject to multiple interpretations, LUBA will remand to allow the city to decide the scope in the first instance. *Davis v. City of Ashland*, 37 Or LUBA 224 (1999).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Where an intergovernmental agreement requires that parties to the agreement must approve amendments to the agreement in writing, a local government errs in invoking a dispute resolution process that allows it to effectively amend the agreement without the agreement of the other parties. *City of Salem/Marion County v. City of Keizer*, 36 Or LUBA 262 (1999).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Consideration of a legislative action more than once within a 12-month period despite a code requirement that such actions be considered only once in a 12-month period provides no basis for reversal or remand, where all parties were given a full opportunity to participate in the proceedings and there was no prejudice to a party’s substantial rights. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A local government has not deferred compliance with mandatory approval criteria where it grants tentative subdivision approval with the condition that development plans be reviewed by a geotechnical engineer prior to the issuance of construction permits. Once a local government has determined that compliance with a mandatory criterion is feasible, it may impose conditions of approval to ensure compliance with that criterion. No hearing on the geotechnical report is required. *Property Rights and Owners, Ltd. v. City of Salem*, 34 Or LUBA 258 (1998).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Absent a specific local requirement that the governing body formally adopt the written decision and findings before the decision becomes final, failure to formally adopt the written findings and decision does not mean the decision is not final. *North Park Annex Bus. Trust v. City of Independence*, 33 Or LUBA 695 (1997).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Under ORS 197.625, when a county code provision has not yet been acknowledged by LCDC, a land use application is subject to that provision, as well as to

the applicable land use goal and its implementing rules. *Evans v. Multnomah County*, 33 Or LUBA 555 (1997).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A local decision is final for purposes of appeal at the time that it meets the requirements of OAR 661-10-010. That a local ordinance requires that the decision be recorded before it becomes "effective" does not affect the date upon which the decision becomes "final" for purposes of appeal. *Friends of Yamhill County v. Yamhill County*, 33 Or LUBA 530 (1997).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A city's denial of an application to *develop* a legally transferable lot has no bearing on the city's obligation to recognize that lot as legally transferable under ORS 92.017. *Eagle Point Development v. City of Shady Cove*, 33 Or LUBA 509 (1997).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. That a parcel may be separately transferable under ORS 92.017 does not determine whether the parcel may be separately developed. *Eagle Point Development v. City of Shady Cove*, 33 Or LUBA 509 (1997).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A city does not err by adopting an alternative decision on the merits in addition to dismissing a local appeal, where petitioner is not prejudiced by the alternative decision. *Shaffer v. City of Salem*, 33 Or LUBA 57 (1997).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. The county is not bound by a hearings officer's previous legal interpretation of a local ordinance where the county determines that the earlier interpretation is incorrect. *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Where a local ordinance requires the city to act on an application within 36 days after filing, LUBA will read that ordinance consistently with state statute to require the city to act within 36 days of the date the application is deemed complete. *Thornton v. City of St. Helens*, 31 Or LUBA 287 (1996).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A local government decision may not defer compliance with discretionary standards without ensuring the full opportunity for public involvement provided in the initial stage of the review process. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. An appeal to LUBA challenging the amount of a local appeal fee established by ordinance adopted under ORS 215.422(1)(c) amounts to an impermissible collateral attack on the fee ordinance. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. When the city's comprehensive plan states it is the city's policy to participate in a joint review procedure of proposed annexations involving the county planning commission, the citizens' planning advisory committee, and the city planning commission, the city may not disregard the policy. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Where petitioners contend the governing body failed to follow procedures arguably required by the local code for making the challenged legislative land use decision, LUBA must defer to the governing body's interpretation of the code and cannot interpret the code provisions in the first instance. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 429 (1995).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Neither ORS 197.830(12) nor OAR 661-10-021 establishes any requirements regarding the nature of the local government proceedings conducted after withdrawal. However, the local government must follow any applicable requirements its own land use regulations impose for making a new final decision. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A code provision that prohibits taking "notice of any communications * * * or other materials prepared in connection with the particular case unless the parties are afforded an opportunity to contest the material" prohibits a hearings officer from considering communications from the local government counsel, or proposed findings submitted by a party, without providing other parties an opportunity for rebuttal. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. 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).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. That a county zoning ordinance authorizes imposition of "fines" for its violation, whereas a separate county compliance ordinance authorizes imposition of "civil penalties" in amounts determined under ORS 203.065(1) or the violated ordinance, does not prevent the county from imposing a civil penalty for violation of its zoning ordinance, based on the amount of the fines allowed by the zoning ordinance for violations. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. The fact that a local zoning ordinance describes the financial penalties that

may be imposed for violations as "fines" is not, of itself, a sufficient basis for determining that proceedings to enforce that zoning ordinance are criminal in nature. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A county can establish procedures for determinations concerning nonconforming uses as part of its zoning ordinance and, if it does so, can require parties to seek a determination regarding the existence or expansion of a nonconforming use through such zoning ordinance procedures, rather than allowing such issues to be initially determined in the county's code enforcement process. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. It is questionable whether a local government could ever be equitably estopped from requiring compliance with applicable comprehensive plan and land use regulation requirements. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Even if misstatement of material fact can provide a basis for equitable estoppel against a local government requiring compliance with applicable comprehensive plan and land use regulation requirements, an erroneous legal conclusion cannot provide a basis for such an equitable estoppel. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. 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).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Absent local code provisions extending such a right, parties have no right to rebut proposed findings. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Where petitioners fail to cite any applicable standard prohibiting the cutting of trees in a comprehensive plan "Distinctive Natural Area," their assertion that cutting trees is inconsistent with the subject parcels' Distinctive Natural Area designation provides no basis for reversal or remand of the challenged decision. *Forest Highlands Neigh. Assoc. v. City of Lake Oswego*, 24 Or LUBA 215 (1992).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Where the local code requires that the decision maker give an oral statement at the beginning of a local hearing to the effect that any party may request that the record remain open for a period of seven days, and where such oral statement is not given, petitioners' substantial right to submit their case is thereby prejudiced and this error provides a basis for remanding the challenged decision. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A local government satisfies plan coordination requirements where it provides notice of proposed plan amendments to affected governmental units, the applicant contacts those governments by telephone shortly before the plan amendment hearing and the affected governmental units either express support or show no interest in participating in the proceedings. *Davenport v. City of Tigard*, 23 Or LUBA 565 (1992).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A local government must determine compliance with a code standard requiring that a proposed golf course will have no significant adverse impact on wildlife. The local government may not leave a determination of compliance with a code approval standard to a state agency. *Kaye v. Marion County*, 23 Or LUBA 452 (1992).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. 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).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. An ordinance governing comprehensive plan amendment procedures does not apply to a local proceeding where no comprehensive plan amendment application was filed, no notice of a proposed comprehensive plan amendment was given, and no comprehensive plan amendment was adopted. *Schrock Farms, Inc. v. Linn County*, 22 Or LUBA 836 (1992).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A local code provision requiring that only members of the board of commissioners reviewing the entire record may act on a matter under review does not impose an affirmative obligation on each county commissioner to demonstrate he or she reviewed the entire record. Absent some indication in the record to the contrary, LUBA will assume a county commissioner performed her duties in accordance with the local code provision. *Toth v. Curry County*, 22 Or LUBA 488 (1991).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Where an applicant seeks approval for development outside of a "stream corridor area," but has already placed related development within the "stream corridor area" on the same property without obtaining necessary local permits, the local government has authority to impose conditions on approval of the applicant's proposed development requiring that the unauthorized development be removed or that necessary local permits be obtained for the unauthorized development. *Tylka v. Clackamas County*, 22 Or LUBA 166 (1991).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. Even where the local code provides for the type of *de novo* review in which the governing body develops its own evidentiary record and renders its decision based on that new record, the code may require that the planning commission record be included as part of the evidentiary record before the governing body in its *de novo* review proceeding. *Union Gospel Ministries*, 21 Or LUBA 580 (1991).

25.4.1 Local Government Procedures – Compliance with Local Ordinances/Regs – Generally. A city commits no error where it reviews an entire land development application, portions of which are subject to different types of local review procedures, utilizing the type of review procedure requiring the greatest notice and opportunity to participate. *J.K. Land Corporation v. City of Gresham*, 19 Or LUBA 66 (1990).