

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A hearings officer does not err in approving development notwithstanding that the applicant failed to comply with a code requirement to determine levels of service based on existing intersection signal timing, where the code contemplates that the city may vary from the strict letter of the code to address unusual situations, based on expert recommendations, and the hearings officer agreed with the applicant’s experts that due to ongoing transportation construction in the area it would serve no purpose to consider existing signal timing. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Although a city may deny a conditional use permit application on the basis that there is not substantial evidence to support findings that all applicable approval criteria are met, a city may not simply deny a conditional use permit application that has already been deemed complete under ORS 227.178(2) for failure to provide requested information. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. If a city gives notice that additional information is required in support of a conditional use permit application, but nevertheless continues to review and make a decision on that application despite the permit applicant’s failure to provide the requested additional information, the local government may not simply cite that failure to provide the requested information as the basis for denying the permit application. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will not defer to a local government’s interpretation of the phrase “necessary for and accessory to” forest management as meaning “convenient and efficient” to forest management, where such an interpretation is contrary to the plain meaning of the word “necessary,” the express language of the provision at issue, and other language in the provision. *Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government’s failure to provide notice to the Department of Land Conservation and Development of a proposed amendment to the zoning map requires remand. *NE Medford Neighborhood Coalition v. City of Medford*, 53 Or LUBA 277 (2007).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Petitioners may not ignore a hearings officer’s findings that particular adjustment/variance criteria do not apply in a particular circumstance and then argue only to LUBA that the proposal violates those adjustment/variance criteria. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Petitioners' assignment of error challenging a hearings officer's decision to consider whether the adjustment/variance criteria that had been applied from the beginning during the local proceedings were the correct adjustment/variance criteria will be denied, where petitioners fail to assign error to the hearings officer's explanation for why he reconsidered whether those criteria were the correct criteria to apply and petitioners make no effort to argue that the hearings officer's explanation is faulty in some way. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where a zoning ordinance requires a "site specific investigation by a registered geologist or engineer," and the local government finds that a preliminary site evaluation prepared by a geologist was sufficient to constitute the required site specific investigation, a petitioner's objection that the preliminary site evaluation is insufficient will be rejected, where petitioner fails to challenge the city's findings that explain why the city viewed the preliminary site evaluation as sufficient. *Jebousek v. City of Newport*, 52 Or LUBA 435 (2006).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. A hearings official does not improperly substitute state agency permit approval criteria for a local subdivision drainage criterion, where she denies subdivision approval based on a finding that the applicant failed to demonstrate that proposed drywells that would be needed for adequate drainage could be approved by the Oregon Department of Environmental Quality or that there were alternative methods of drainage if the drywells could not be approved. *Weiskind v. City of Eugene*, 52 Or LUBA 753 (2006).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will not consider an argument that an annexation is barred by a statute that was adopted and took effect after the annexation was approved, where LUBA would be required to consider extra-record evidence to do so, the local government objects to LUBA's consideration of that extra-record evidence and petitioner does not file a motion requesting an evidentiary hearing at LUBA. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. ORS 268.354(1), which provides that in addition to other statutory requirements "boundary changes within a metropolitan service district are subject to the requirements established by the district," is an adequate statutory grant of authority to allow the district to adopt legislation that delays the effective date of an annexation ordinance while the annexation ordinance is on appeal to the district. *City of Happy Valley v. City of Damascus*, 51 Or LUBA 141 (2006).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where a review criterion that applies to a city boundary change on review by Metro unambiguously requires that the boundary change must be consistent

with agreements between the city and other necessary parties, a memorandum of understanding to which the city is not a party could not provide a basis for Metro to deny the annexation ordinance under that review criterion. *City of Damascus v. Metro*, 51 Or LUBA 210 (2006).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Reversal, not remand, is the appropriate remedy where a challenged property line adjustment purports to reconfigure the lot lines of three adjacent lots of an existing subdivision to create two lots out of the pre-existing three lots, and the reconfiguration cannot be achieved through a single property line adjustment or through serial adjustments. *Borton v. Coos County*, 51 Or LUBA 478 (2006).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will reject a petitioner’s argument that a tree plan does not adequately protect trees, simply because the tree plan recognizes that during the development process trees slated for removal in the tree plan may be saved, where the local code merely requires that an applicant for development approval prepare a tree plan and states that “[p]rotection [of trees] is preferred over removal wherever possible.” *Frewing v. City of Tigard*, 50 Or LUBA 226 (2005).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a petitioner shows that a county’s findings are inadequate, but the quality of the evidentiary record and the findings that could reasonably be adopted based on that record are disputed, remand is the appropriate remedy where (1) petitioner does not show that a county’s decision is “outside the range of discretion allowed the [county] under its comprehensive plan and implementing ordinances,” which would require reversal of the county’s decision and an order to approve the permit under ORS 197.835(10)(a) or (2) that the county’s decision to deny the permit “violates a provision of applicable law and is prohibited as a matter of law,” which would justify a decision by LUBA to reverse the county court’s decision under OAR 661-010-0073(1)(c). *Hellberg v. Morrow County*, 49 Or LUBA 423 (2005).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will decline to interpret a local provision in the first instance under ORS 197.829(2), where the provision is subject to several potential interpretations, some of which, if adopted, would require reversing the decision. In such circumstances, remand is appropriate to allow the governing body to interpret the provision in the first instance. *Moreland v. City of Depoe Bay*, 48 Or LUBA 136 (2004).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will not resolve a petitioner’s challenge to a county’s interpretation of a comprehensive plan policy where, under the facts found by the county and affirmed by LUBA, the plan policy would be applied the same way under either petitioner’s or the county’s interpretation. Under such circumstances, the interpretative dispute between the parties is merely hypothetical, and the alleged

misinterpretation provides no basis for reversal or remand. *Doob v. Josephine County*, 48 Or LUBA 227 (2004).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Code language that prohibits a city from requiring design changes that are “materially different from customary development in the area” is not properly interpreted to mandate that the city impose a roof height that is customary within the area, or prohibit the city from approving a roof height that is not customary. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Regional plan amendments that will require a city to amend its zoning ordinance to include specific provisions to protect industrial land from being converted to office and commercial use do not violate a city’s constitutional home rule authority. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Concern about the potential for conversion of industrially planned and zoned lands to commercial and office uses is a legitimate area of metropolitan concern within the jurisdiction of the Metropolitan Service District. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where a zoning ordinance requires preparation of a management plan to protect wildlife resources when siting a house in a significant wildlife habitat area and the local government approves the dwelling without the required management plan, remand is required, notwithstanding that there may be documents in the record from which the required management plan could be developed. *Burton v. Polk County*, 48 Or LUBA 440 (2005).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. While it might be error for a local government to rely on findings demonstrating compliance with a less rigorous “balancing” standard to demonstrate compliance with a more rigorous “no adverse impact” standard, the reverse is not necessarily true: the local government may be able to rely on findings of compliance with the more rigorous standard to demonstrate compliance with a less rigorous standard. *Cadwell v. Union County*, 48 Or LUBA 500 (2005).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will reverse rather than remand a decision approving a property line adjustment, where the decision erroneously approves something other than a property line adjustment, and the decision and respondent offer no theory as to how the city could lawfully do what the decision purports to do. *South v. City of Portland*, 48 Or LUBA 555 (2005).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A code provision that authorizes continuation of existing uses that are unlawful or in violation of applicable land use laws is inconsistent with such laws. *Okray v. City of Cottage Grove*, 47 Or LUBA 297 (2004).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where a city cites no authority for the city engineer to agree to reduce the speed limit for a proposed road rather than requiring that the road be constructed to city standards for vertical sag curves, LUBA will remand the city's decision. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A county's approval of a five-acre lot subdivision inside the UGB with a condition requiring that the applicant record CC&Rs that effectively prohibit further subdivision of those five-acre lots violates ORS 197.752. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. It is not within LUBA's scope of review to address whether existing code design review standards comply with the ORS 197.307(3)(b) requirement for "clear and objective" approval standards, in the context of a post-acknowledgment plan amendment that rezones property to allow uses that will be subject to approval under the existing design review standards, where the challenged decision does not amend the design review standards or attempt to bring any part of the city's code into compliance with ORS 197.307(3)(b). *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where two pages of legal argument are attached to a local appellant's jurisdictional statement of the grounds for local appeal, and the county refuses to consider those two pages simply because they are unsigned and include a non-appellant's fax header, the county commits error. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where local appellants (1) sign a local appeal form, (2) indicate "see attached" in the part of the appeal form where the grounds for the local appeal are to be specified, and (3) attach two pages that identify alleged legal errors in the decision, it is error for the county to refuse to consider the attached pages simply because there is no signature at the bottom of those pages and the pages include the fax header of a non-appellant. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. LUBA will not assume a county rejected a local appeal, where petitioner and the county dispute whether the county rejected petitioner's attempted local appeal or whether petitioner voluntarily withdrew his local appeal to correct identified deficiencies and later failed to refile the local appeal, and the record does not establish

that the county rejected the local appeal. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where a county's local appeal form invites five local appellants to utilize a single local appeal form and attach documents in support of the appeal to that local appeal form, the county may not impose additional signature and express incorporation requirements that are not reflected in the form to limit the right of individual local appellants to rely on attached documents to support their local appeal. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. For the purposes of ORS 197.830(3), a notice of hearing that explains that a county is considering the annexation of property to a sewer district adequately describes the proposed action to be taken by the county, even if the area described in the notice is later amended to delete one parcel. *Miner v. Clatsop County*, 46 Or LUBA 467 (2004).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where a local code provision expressly requires that a proposed subdivision must “conform to” the comprehensive plan, the local government errs in interpreting the code to preclude the possibility that there are any comprehensive plan provisions that might apply directly to the subdivision proposal. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where LUBA concludes that relevant local code provisions make the comprehensive plan requirements potentially applicable to an application for subdivision approval and that a particular comprehensive plan provision applies and is not merely aspirational, and the local government approved the subdivision without addressing the comprehensive plan provision, the subdivision approval decision must be remanded. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

28.8.5 LUBA Scope of Review - Grounds for Reversal/Remand - Noncompliance with Applicable Law. Where a local government has adopted no local highway design safety standards, it commits no error by applying American Association of State Highway and Transportation Official standards to reject a subdivision opponent's intersection site distance concerns, notwithstanding that it has not adopted those standards and may have been laboring under the incorrect assumption that it had adopted those standards. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a city code provision requires that a design review decision maker consider impacts on neighboring land values, and the code also grants discretion to the decision maker to modify a proposed site design to better conform to code standards,

a city errs in failing to consider proposed modifications to a site design to minimize impacts to neighboring land values. *Freeland v. City of Bend*, 45 Or LUBA 125 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners’ assignment of error is based on the erroneous assumption that a code standard that prohibits home occupations that are “objectionable due to [emissions]” prohibits *any* discernable emissions, and petitioners do not challenge city findings that the emissions that can be expected from a proposed home occupation will not be objectionable, the assignment of error provides no basis for reversal or remand. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government adopts unchallenged findings explaining that a demonstration that a proposed conditional use complies with all relevant zoning ordinance criteria is also sufficient to establish that the conditional use complies with the comprehensive plan, petitioners’ challenge at LUBA that the conditional use is inconsistent with particular comprehensive plan provisions that are not specifically addressed in the conditional use decision provides no basis for reversal or remand. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. OAR 660-023-0180 establishes a comprehensive regulatory scheme for reviewing mining applications. A county errs when it denies an application for mining in part because it does not comply with local approval criteria that are unrelated to OAR 660-023-0180. *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A county may not approve a nonfarm dwelling on a parcel created after January 1, 1993, under ORS 215.284(2)(c), which requires that the parcel on which a nonfarm dwelling is to be located be created prior to January 1, 1993, in order to remedy what it perceives to be an injustice. *Harris v. Jefferson County*, 44 Or LUBA 205 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A decision that approves a nonfarm dwelling on EFU land notwithstanding that the application does not comply with the applicable criteria set out at ORS 215.284(2)(c) will be reversed. *Harris v. Jefferson County*, 44 Or LUBA 205 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A county did not err in determining that for the purposes of tallying the number of parcels within a 160-acre template, “parcels” are not limited to those units of land created by partitioning, and include other units of land that qualify as “parcels” under the county’s definition of the term. *Testa v. Clackamas County*, 44 Or LUBA 402 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. An initial notice of a proposed post-acknowledgment amendment submitted to DLCD pursuant to ORS 197.610(1) and OAR 660-018-0020(1) that does not include the “text” of the proposed amendment as defined by OAR 660-018-0020(2) is

inadequate to perform the notice function required by ORS 197.610(1). *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. An initial notice of a proposed post-acknowledgment amendment submitted to DLCD pursuant to ORS 197.610(1) and OAR 660-018-0020(1) that includes the text of the proposed amendment as that term is defined in OAR 660-018-0020(2), but was submitted approximately 23 days prior to the city’s initial evidentiary hearing is adequate to perform the notice function required by ORS 197.610(1). *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a city has a process requiring that proposed amendments to a comprehensive plan and zoning code be subject to hearing and review by the planning commission and proposed design review guidelines be subject to hearing and review by the design commission, a notice of proposed amendment regarding the matters before the planning commission is not sufficient to apprise DLCD or others who receive notice pursuant to ORS 197.610(2) of the design review proceedings. *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. An initial notice of a proposed post-acknowledgment amendment submitted to DLCD pursuant to ORS 197.610(1) and OAR 660-018-0020(1) that erroneously states that the initial evidentiary hearing had been held and does not indicate whether further opportunities to provide evidence are available is not adequate to satisfy ORS 197.610(1), which requires that notice of proposed post-acknowledgment land use amendments be submitted to DLCD at least 45 days prior to the initial evidentiary proceedings on those amendments. *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Petitioners may not argue that a city’s decision to deny its application was for the purpose of avoiding the 120-day decision deadline set out at ORS 227.178, when the challenged decision was rendered five days after that deadline. *Oregon Child Devel. Coalition v. City of Madras*, 43 Or LUBA 184 (2002).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will reverse rather than remand a decision, where the local government has twice denied development based solely on code interpretations that LUBA found to be clearly erroneous, and there is little likelihood that remand could result in a sustainable denial. *Church v. Grant County*, 43 Or LUBA 291 (2002).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Pursuant to ORS 197.830(3), a city decision maker must disclose all *ex parte* contacts at the first opportunity and must inform participants of their right to rebut the substance of the disclosure. However, a city’s failure to inform a petitioner of

his right to rebut the substance of an *ex parte* disclosure will not result in reversal or remand where (1) the disclosure of the *ex parte* contact was promptly made; (2) petitioner had more than one opportunity to object to the adequacy and the content of the disclosure; and (3) no party appears to dispute the facts alleged in the disclosure. *DLCD v. City of Gold Beach*, 43 Or LUBA 319 (2002).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA may not overlook the fact that a new land use regulation is facially noncompliant with a Metro standard that the regulation is intended to implement, simply because the regulation requires compliance with unspecified standards of a sewerage agency that allegedly comply with the Metro standard. Even if the sewerage agency standards comply with the Metro standard, it is questionable whether the city may adopt noncompliant regulations and rely on a separate local government or agency to ensure compliance with the Metro standard. *Stallkamp v. City of King City*, 43 Or LUBA 333 (2002).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will not remand a decision based on an allegation that the decision maker failed to follow the consultation and coordination requirements of OAR 340-252-0060, where the record makes clear that all parties required by the rule to be consulted were aware of and actively participated in the process leading to the challenged decision, and any failure to follow the procedures set out by the rule was attributable to someone other than the decision maker. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435.

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. OAR 660-004-0000(2) does not, as a matter of law, impose a requirement that an applicant for an exception to Goal 3 to permit a single-family dwelling on a 10-acre parcel first exhaust all other potential avenues to obtain approval for that single-family dwelling. *DLCD v. Yamhill County*, 42 Or LUBA 126.

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a code criterion can be interpreted to impermissibly shift the burden of proof from an applicant to an appellant in a local land use appeal, but it is reasonably clear that the county did not apply the code criterion to shift the burden in that manner, petitioner’s assignment of error that the county improperly shifted the burden of proof will be denied. *Oregon Natural Desert Assoc. v. Grant County*, 42 Or LUBA 9.

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where it is not apparent that a county adopted one or more conditions of approval to address the impacts described in ORS 215.296(1), petitioner’s argument that the county’s conditions of approval are not “clear and objective,” as is required by ORS 215.296(2), provides no basis for reversal or remand. *Oregon Natural Desert Assoc. v. Grant County*, 42 Or LUBA 9.

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A post-acknowledgment amendment to an ordinance

implementing Goal 5 must be remanded, where the city failed to provide the notice to DLCD required by ORS 197.610(1) and 197.615(1). *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 453 (2002).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A decision that only partially complies with a set of legal requirements that do not allow for partial compliance may be remanded on that basis. *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A city council's decision to allow the prevailing party to draft proposed findings in support of a decision to rezone property provides no basis for reversal or remand. *Dimone v. City of Hillsboro*, 41 Or LUBA 167 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A zoning ordinance provision that expresses a preference for nonstructural over structural solutions to erosion and flooding problems does not apply to an application for recreational vehicle park expansion that proposes erosion or flooding measures, at least where the proposal does not make structural erosion or flood control measures likely or inevitable. *Willhoft v. City of Gold Beach*, 41 Or LUBA 130 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Any error that may have been committed by failing to provide a proposed comprehensive plan amendment to DLCD 45 days before the first evidentiary hearing was corrected on remand by offering to provide the proposal to DLCD more than 45 days before the evidentiary hearing on remand, where there is no contention that DLCD failed to receive the proposal or failed to provide notice of the proposal in accordance with ORS 197.610(1) and DLCD advises the county that it does not oppose the proposal. *Donnell v. Union County*, 40 Or LUBA 455 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Although rezoning a 1.94-acre parcel from residential to commercial may not violate comprehensive plan policies that require an adequate supply of urban land to meet urban needs and support of transportation systems by locating housing near work and shopping areas, a local government errs in finding that those policies are irrelevant. *Swyter v. Clackamas County*, 40 Or LUBA 166 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. While a development may have to eventually comply with federal laws, such as the Endangered Species Act, unless local approval criteria or federal law provisions require that the local decision that approves the development also demonstrate compliance with federal law, the decision need not do so. *McNern v. City of Corvallis*, 39 Or LUBA 591 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Any error in failing to comply with code provisions for amending the Metro UGB is harmless, where the pertinent code provisions are not based on statute,

goal or rule; the provisions have been superseded by new standards that would apply on remand; and it is undisputed that the decision does not violate the new standards. *Citizens Against Irresponsible Growth v. Metro*, 39 Or LUBA 539 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local ordinance that institutes a process to remove property from a Goal 5 historic resources inventory but fails to include a method to determine whether the historic designation was “imposed” on the property, within the meaning of ORS 197.772(3), is inconsistent with that statute. *Demlow v. City of Hillsboro*, 39 Or LUBA 307 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government may not apply only local code provisions to an application to remove property from a historic resources inventory, where the local code provisions are inconsistent with statutory provisions permitting removal of certain properties from a historic resources inventory. *Demlow v. City of Hillsboro*, 39 Or LUBA 307 (2001).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. 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).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. In reviewing land use decisions, LUBA’s scope of review is not limited to arguments regarding the local government’s application of land use regulations or other land use standards; LUBA may also consider arguments that the decision violates applicable non-land use standards. *Carlsen v. City of Portland*, 39 Or LUBA 93 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the Court of Appeals directs LUBA to consider on remand an assignment of error directed at the local government’s application of a policy that is not a land use regulation or otherwise a land use standard, LUBA will consider the policy to be “applicable law” for purposes of LUBA’s scope of review under ORS 197.835(9)(a)(D). *Carlsen v. City of Portland*, 39 Or LUBA 93 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A city does not err by failing to apply comprehensive plan annexation policies in reviewing an application for annexation, where those policies were adopted after the application for annexation was submitted and became complete. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. An access road to a winery is an accessory use to the winery. When the zoning for the location of the proposed access road does not allow wineries, the access road cannot be established as an accessory use on that part of the property. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. As long as the expansion of the public use airport continues to serve the same class of airplanes pursuant to OAR 660-012-0065, the expansion is considered to be consistent with Goals 3, 4, 11, and 14, and an exception to those goals is not required. *Lentz v. Lane County*, 38 Or LUBA 669 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the city’s code requires that connections to the city sewer be made within 90 days after receiving official notice to do so, a local government’s decision to extend the deadline for compliance does not provide a basis for reversal or remand in the absence of a showing that the required official notice was given, or that the extension of the compliance deadline is otherwise prohibited. *Reynolds v. City of Sweet Home*, 38 Or LUBA 507 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. DEQ administrative rules do not require that restroom facilities be connected to a public sewer system. In the absence of such a requirement, the use of portable toilets rather than plumbed restrooms does not require the revocation of a conditional use permit for an RV park. *Reynolds v. City of Sweet Home*, 38 Or LUBA 507 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A city’s interpretation of its code to allow for modifications of conditions of approval is not “clearly wrong” where the code allows for modification of a conditional use and the city interprets the modification provision to allow for amendments to conditions where the use continues to meet the purpose of the conditional use provisions, or the permit holder has established a valid basis for extending the time period for compliance. *Reynolds v. City of Sweet Home*, 38 Or LUBA 507 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Petitioner fails to establish error in approving a subdivision without environmental review required for development in an environmental zone, where the applicant proposes no development in an environmental zone and the only impact on an off-site environmental zone is the release of storm water at predevelopment rates. *Bauer v. City of Portland*, 38 Or LUBA 432 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Failure to list applicable criteria in a pre-hearing notice in violation of ORS 197.763(3)(a) allows petitioner to raise issues at LUBA relating to the omitted criteria without having raised those issues before the local government. However,

failure to list applicable criteria does not, in itself, provide a basis for reversal or remand. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A neighborhood association’s failure to provide specific notice to a permit applicant that the neighborhood association was going to consider appealing the applicant’s permit approval at its regular meeting does not violate ORS 192.640(1) of the Public Meeting Law, where the permit approval was issued on the same day as the regular meeting, and the statute specifically authorizes consideration of principal subjects that are not included in the notice of public meeting. *St. Johns Neighborhood Assoc. v. City of Portland*, 38 Or LUBA 275 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A land use decision maker commits no error by failing to require that an applicant for approval of a transmission tower justify the proposed height of the tower, where the relevant statutes impose different approval criteria depending on the height of the tower but do not require that the proposed tower height be justified. *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a county approves aggregate mining in an airport overlay zone under a standard that allows water impoundments that do not significantly increase bird strike hazards, but the county does not address another local standard that appears to flatly prohibit such impoundments, LUBA will remand the decision to the county to resolve the apparent conflict between the two standards. *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a zoning ordinance standard requires consideration of residential appearance and function of an “area” in approving a bed and breakfast facility, and a hearings officer’s selection of a two-block area for analysis is based on assumed walking distance to cars parked off-site and is no less plausible than petitioner’s rationale for selecting a larger area for analysis, the hearings officer does not misconstrue the applicable law. *Hatfield v. City of Portland*, 37 Or LUBA 664 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A petitioner’s arguments that a zoning ordinance amendment violates a plan policy discouraging uses that are not water dependent provides no basis for remand, where the challenged decision raises the maximum building height and does not approve any particular use of the property. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. An argument that a city erred by failing to adopt findings addressing a plan policy that is 22 single-spaced pages long and broken down into many subparts is inadequately developed, where the city adopted findings addressing two parts of the policy and petitioner makes no attempt to explain what other parts of the policy

petitioner believes are applicable. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where LUBA finds that an administrative rule provision is valid, and the appealed decision approves an application solely on the basis that the administrative rule is invalid, the appealed decision must be reversed. *Bruggere v. Clackamas County*, 37 Or LUBA 571 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the city council’s review of a planning commission decision is limited to whether the lower decision is supported by substantial evidence, and petitioner argues that the city council exceeded its review authority by reweighing the evidence, LUBA will deny the assignment of error where it concludes that the city council understood and applied the substantial evidence standard correctly. *Ontrack, Inc. v. City of Medford*, 37 Or LUBA 472 (2000).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Imposition of an ineffective condition as part of a comprehensive plan map amendment may result in remand where the condition is necessary to ensure compliance with a relevant approval criterion. However, such an ineffective condition does not provide a basis for reversal or remand where it is not shown that the condition is necessary to ensure compliance with plan map amendment approval criteria. *Neighbors for Livability v. City of Beaverton*, 37 Or LUBA 408 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a decision maker discloses *ex parte* contacts at the beginning of the local proceedings, petitioners must request clarification of the *ex parte* contacts or otherwise object to the adequacy of the disclosure during the local proceedings. Because petitioner failed to object below, petitioner’s assignment of error does not provide a basis for reversal or remand. *Wild Rose Ranch Enterprises v. Benton County*, 37 Or LUBA 368 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the statute authorizing counties to permit home occupations is amended to remove the limitation that the home occupation be conducted entirely within a dwelling or accessory building, but the county’s home occupation ordinance still reflects the former statute, the county is not required to apply its home occupation ordinance consistently with the stricter requirements of the former statute and case law interpreting that statute. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will not conclude that the statutory definition of high-value soils excludes soil complexes in which listed soils form the predominant part, where petitioner fails to establish a sufficient basis to form that conclusion. *Tri-River Investment Co. v. Clatsop County*, 37 Or LUBA 195 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Metro may adopt a functional plan with site-specific requirements without necessarily exceeding its authority under ORS 268.030(3) to “provide for those aspects of land use planning having metropolitan significance.” *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where LUBA rejects as a matter of law a county’s erroneous interpretation of its comprehensive plan as imposing a 2.3-acre minimum residential density, procedural errors the county may have committed in considering evidence outside the record in reaching that erroneous interpretation provide no additional basis for remand. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government is not estopped from following the appeal procedure that is required by its code where it is unclear whether county staff (1) made any false statements to the applicant concerning appeal procedures, (2) were aware that any of their representations were incorrect, or (3) intended that the applicant take any action based on such representations; and the applicant does not identify how she was induced to act differently by the county’s representations. *Lawrence v. Clackamas County*, 36 Or LUBA 273 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will reverse a land use decision only where the decision is prohibited as a matter of law. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government’s modification of standards applicable to a planned unit development rests on independent alternative grounds, petitioner’s demonstration of error in one alternative ground provides no basis to reverse or remand the challenged decision where petitioner fails to challenge the other alternative ground. *Hard Rock Enterprises v. Washington County*, 36 Or LUBA 106 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a hearings officer’s findings are inadequate to explain why a proposed use that qualifies as a permitted use as a “household” does not also fall within the definition of a “nursing home,” which is only allowed as a conditional use, a remand would normally be required. However, where the facts are not disputed, and LUBA is presented with a straightforward question of law, it may consider whether the proposed use falls within the definition of “nursing home.” *Neels v. Clackamas County*, 36 Or LUBA 54 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a county code applies the same “stability” standard that is required by ORS 215.284(1)(d) and (2)(d) for nonfarm dwellings to approval of recreational vehicle parks, it is not bound by case law that interprets and applies the statutory standard, where LUBA did not determine in its decision remanding the decision

to the county that it must interpret the code standard in the same manner that the statute has been interpreted. *Ray v. Douglas County*, 36 Or LUBA 45 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A county code “stability” standard that does not implement the statutory nonfarm use “stability” standard is not subject to case law interpreting the statutory “stability” standard, but such a code “stability” standard necessarily connotes a temporal period and a scope of causative impact for analysis. However, a county’s interpretation of the local “stability” standard as focusing on short-term effects and direct impacts rather than long-term and cumulative impacts is not clearly wrong and therefore must be affirmed by LUBA. *Ray v. Douglas County*, 36 Or LUBA 45 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a plan policy provides that the purpose of a rural industrial zone is to allow industrial uses in close proximity to the resources upon which they rely, but it is not clear how that policy applies and the list of allowed uses in the rural industrial zone does not appear to be consistent with the policy, LUBA will remand the decision so that the local government can interpret the plan policy in the first instance. *James v. Josephine County*, 35 Or LUBA 493 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. In determining whether to reverse or remand a land use decision, the question is whether it is the land use decision or the land use proposal that is defective. *Angius v. Washington County*, 35 Or LUBA 462 (1999).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A hearings officer’s determination that an EFU-zoned property is not necessary to provide a proposed public service is not inconsistent with a drainage master plan and does not constitute an impermissible collateral attack on the drainage master plan, where the drainage master plan was not adopted in accordance with post-acknowledgment procedures and only identifies the site as a “preferred” site. *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A city does not err in regulating conditional uses differently from uses permitted outright even if a particular conditional use is similar to a use permitted outright. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Although Oregon Laws 1997, chapter 859 (HB 2605) repeals two sections of the legislation that directed DLCDC to adopt the Airport Planning Rule (APR), the 1997 legislation does not completely supersede the APR or DLCDC’s authority to adopt rules regarding airport planning. *Northwest Aggregates Co. v. City of Scappoose*, 35 Or LUBA 30 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A city cannot find it is feasible to comply with all approval

criteria based on a site plan for only four of the total 15 lots and defer submission of a complete site plan, and the record does not clearly support a determination of compliance with the approval criteria where the complete site plan is not included in the record. *Deal v. City of Hermiston*, 35 Or LUBA 16 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government may approve a partition and defer determination of an applicable approval criterion, provided the subsequent approval process provides the same notice and opportunity for public input as the original proceeding and the approval criteria are not so dependent on each other that they must be applied together. *Sunningdale-Case Heights Assoc. v. Washington Co.*, 34 Or LUBA 549 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. While petitioners may raise issues concerning compliance with approval criteria that are not identified in the local notice of hearing, petitioners must supply some explanation why they believe a "purpose statement" should be viewed as an approval criterion; petitioners may not simply assume that it is a criterion. *Rouse v. Tillamook County*, 34 Or LUBA 530 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Because a county's interpretation of its code to allow deferral of compliance with an approval criterion to a later stage with no opportunity for public hearing is contrary to ORS 197.763(2) and 215.416, LUBA owes that interpretation no deference under ORS 197.829(1). *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government misapplies the applicable law by prohibiting seasonal farmworker housing that is permitted by statute, LUBA will remand and not reverse where the statute permits the local government to condition and even deny an application for seasonal farmworker housing, and thus the result is not prohibited as a matter of law. *Shadrin v. Clackamas County*, 34 Or LUBA 154 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973), does not establish procedural requirements independent of those required by state statute or local ordinance. *St. Johns Neighborhood v. City of Portland*, 34 Or LUBA 46 (1998).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. ORS 197.835(10)(a)(B), which allows LUBA to reverse a local government's decision and order development approval when denial of the application was for the purpose of avoiding the 120-day limit of ORS 215.428, does not apply to good faith denials on the merits of the application, whether timely or untimely. *Miller v. Multnomah County*, 33 Or LUBA 644 (1997).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. In adopting land use regulations, including emergency and temporary land use regulations, a city is bound by the substantive and procedural requirements established by ORS 197.610 and Statewide Planning Goals 1 and 2. These statutory and Goal requirements must be followed notwithstanding contrary city charter provisions. *Western PCS, Inc. v. City of Lake Oswego*, 33 Or LUBA 369 (1997).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A city's error in converting an appeal of a quasi-judicial decision into a *de novo* legislative proceeding is substantive rather than procedural, and its decision is prohibited as a matter of law. *Anderson v. City of Shady Cove*, 33 Or LUBA 173 (1997).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. The word "shall," used in a regulation, expresses what is mandatory. A local government interpretation to the contrary is indefensible and will not be affirmed by LUBA. *DLCD v. Tillamook County*, 33 Or LUBA 163 (1997).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Mandatory code requirements cannot be subverted by a local government interpretation. *DLCD v. Tillamook County*, 33 Or LUBA 163 (1997).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a condition of approval requires that the developer shall provide a "turnaround" at the end of a platted street, and the existence of the turnaround will bring the street within the definition of a cul-de-sac under local code, the city's tentative plat approval must be remanded where it does not satisfy the applicable local criteria for a cul-de-sac. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the city's comprehensive plan expressly requires that new subdivisions shall have sidewalks, the city may not use the variance procedures of its subdivision ordinance in order to grant an exception to the comprehensive plan sidewalk requirement. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the county's interpretation of a local ordinance allows dog kennels that were in existence in 1986 to be established as permitted uses without a showing of compliance with the ORS 215.296 farm impact standards, the county's interpretation violates ORS 215.283(2). *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the county's interpretation of a local ordinance regarding nonconforming uses allows an abandoned nonconforming dog kennel use to be reinstated, that interpretation violates OAR 660-33-120, which prohibits new kennels on

high-value farmland. *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will defer to the county governing body's interpretation of a plan policy as being applicable when development approval is sought rather than when the plan map is amended. *Helvetia Community Assoc. v. Washington County*, 31 Or LUBA 446 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Petitioner's conjecture regarding one hypothetical development scenario does not provide a basis for a determination that the city's decision does not conform to the applicable criteria. *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Statements made by individual decision makers during local government hearings that express erroneous interpretations of law or legally improper reasons for adopting a land use decision provide no basis for reversal or remand unless such statements are adopted in the final written decision or findings supporting the written decision. *Fraley v. Deschutes County*, 31 Or LUBA 566 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Local governing body may not determine an appeal to be moot and reinstate an earlier, rescinded decision, based on petitioner's collateral challenge to the authority of the planning director to rescind that earlier decision, when the rescission decision was not timely appealed. *Petterson v. Klamath County*, 31 Or LUBA 402 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Application of a local zoning ordinance to allow a nonconforming use that has been interrupted or abandoned to be resumed, violates ORS 215.130(7) and must be reversed. *Moore v. Coos County*, 31 Or LUBA 347 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. The city's failure to address aspirational criteria stated in the city's comprehensive plan does not provide a basis for reversal or remand. *Stewart v. City of Brookings*, 31 LUBA 325 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioner does not establish that alleged inadequacies in the findings relate to any applicable approval criteria, petitioner has provided no basis for reversal or remand. *Stewart v. City of Brookings*, 31 LUBA 325 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. If a county recognizes a citizens planning advisory committee (CPAC) chosen in violation of election procedures previously adopted by resolution and

incorporated by reference in its comprehensive plan, it ignores a substantive violation of its plan and land use regulations, and the CPAC is a nullity. *Boom v. Columbia County*, 31 Or LUBA 318 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a comprehensive plan policy is couched in mandatory terms, but does not state an approval standard, the county's failure to address that policy in its decision is not error. *Friends of Indian Ford v. Deschutes County*, 31 Or LUBA 248 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a hearings officer's interpretation that the county's street frontage requirement mandates street frontages be on a public road or street is contrary to the plain language of the county's zoning ordinance, a denial of a partition based solely on that interpretation will be reversed. *Miller v. Clackamas County*, 31 Or LUBA 104 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. If the local government's interpretation of its own code regarding the scope of a proposed partition contravenes the express language of the code, LUBA will not defer to that interpretation. *Tognoli v. Crook County*, 30 Or LUBA 272 (1996).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the inapplicability of a local code provision is clear on its face, or petitioner's challenge to its applicability is so untenable as to obviate the need for the local government's authoritative interpretation, a remand for such purpose is unnecessary. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Although LUBA may not itself order a local government to refund a fee charged for a local appeal, local fee payment issues are part of the land use appeals structure, capable of violating applicable legal standards and providing a basis for remand. *Gensman v. City of Tigard*, 29 Or LUBA 505 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners fail to identify any applicable legal standard allegedly violated by the county's decision, petitioners have supplied no basis for reversal or remand of the challenged decision. *Collier v. Marion County*, 29 Or LUBA 462 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. If a code provision simply provides the decision maker "may require" an applicant to submit a traffic capacity analysis, but petitioners identify no legal standard arguably requiring such an analysis in the instant case or establishing standards for local government decisions on whether to require such an analysis, the local

government's failure to require such an analysis does not provide a basis for reversal or remand. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Although LUBA owes no deference to a hearings officer's interpretation of a local enactment, LUBA may remand a challenged decision in cases where the interpretation at issue is not explained in the findings or differs from an earlier interpretation, in order to give the hearings officer an opportunity to interpret the local enactment in the first instance. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. ORS 197.829 governs this Board's scope of review in reviewing local government governing bodies' interpretations of local enactments. ORS 197.829(4) has nothing to do with whether a particular statutory provision applies directly as an approval standard for a local government land use decision. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. When reviewing a local governing body's decision, LUBA cannot interpret local enactments in the first instance. Where petitioners challenge a local governing body's decision on the basis of failure to comply with certain arguably applicable comprehensive plan and code provisions, and the challenged decision contains neither an interpretation of the applicability of the plan and code provisions, nor a determination of whether they are satisfied, the challenged decision must be remanded. *McCrary v. City of Talent*, 29 Or LUBA 110 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government does not identify specific provisions in its comprehensive plan which it contends provide the basis for challenged land use regulation amendments, under ORS 197.835(5)(b), LUBA is required to reverse or remand the land use regulation amendments if they do not comply with applicable provisions of the Statewide Planning Goals. *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where respondents do not identify specific provisions in the applicable comprehensive plan, which they contend provide the basis for challenged zone changes, under ORS 197.825(5)(b) LUBA is required to reverse or remand the zone changes if they do not comply with applicable provisions of the Statewide Planning Goals or their implementing rules. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioner alleges the local government's notice of public hearing violates local code requirements, but petitioner fails to provide LUBA with the

local code requirements allegedly violated, LUBA will deny the assignment of error. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. There can be no possible rational dispute that an adjustment changing the number of parking spaces required for a proposed development does not violate a code prohibition against adjustments that are "exception[s] to the procedural steps of a procedure or to change assigned procedures." *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. In reviewing a decision adopted by the local governing body, LUBA must review the governing body's interpretation of local code provisions and may not interpret the local code in the first instance, unless there is "no possible rational dispute" regarding the correct interpretation of the local code. *Foster v. Coos County*, 28 Or LUBA 609 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA is not required to defer to a hearing's officer's interpretation of the local code under ORS 197.829 or *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992). Rather, LUBA's review of a hearing's officer's interpretation is to determine whether the interpretation is reasonable and correct. *Ellison v. Clackamas County*, 28 Or LUBA 521 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the record demonstrates that two city council members had numerous ex parte contacts with the applicant and failed to disclose those contacts and provide an opportunity for rebuttal, as required by ORS 227.180(3), remand is required. *Smith v. City of Phoenix*, 28 Or LUBA 517 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. The "public need" standard formerly imposed on quasi-judicial zone changes under *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973), does not apply to comprehensive plan amendments, unless the applicable comprehensive plan or land use regulations impose such a "public need" standard. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the challenged decision is adopted by the governing body, LUBA may not interpret the applicability of arguably applicable comprehensive plan policies. Rather, the governing body must interpret the applicability of such plan policies in the first instance. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the local government determined comprehensive plan objectives are mandatory approval standards in a recently appealed local decision, it may

not later determine that plan objectives are mere guidelines and not mandatory approval standards in a different decision appealed to LUBA, in the absence of some explanation for the disparity. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the local code simply provides the planning director may reject an application concerning a property where a violation of local or state law is found to exist, but does not require that the planning director do so, petitioner's allegations concerning improper or fraudulent past actions by the local government concerning the property fail to provide a basis for reversal or remand. *Scholes v. Jackson County*, 28 Or LUBA 407 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Read together, ORS 215.263(7) and ORS 215.284(2)(c) prohibit the further division of an EFU-zoned parcel created before January 1, 1993, on which a nonfarm dwelling has already been approved. Therefore, a county decision approving division of such a parcel is erroneous as a matter of law and must be reversed. *Harrell v. Baker County*, 28 Or LUBA 260 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a challenged decision was not adopted by the governing body of the local government, LUBA owes no deference to the interpretations of local enactments expressed in that decision. *Pickrell v. City of Portland*, 28 Or LUBA 103 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Assignments of error that contend disputed conditions of approval either exceed a local government's authority under, or improperly construe, applicable law, if sustained, provide a basis for reversal or remand of a challenged decision, regardless of whether the challenged decision is a land use decision or limited land use decision. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government does not exceed its authority under a code section authorizing it to control "the nature and scale of development" by prohibiting development of two lots, as configured in a proposed seven lot subdivision. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a challenged decision determines certain comprehensive plan policies are mandatory approval standards applicable to the proposed action, but LUBA cannot determine from the decision what the local government believes those policies require, the decision must be remanded for the local government to interpret the policies. *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where comprehensive plan and zoning map amendments simply change the designation and zone of a county park to ones that allow parks as a conditional use, the amendments are not inherently inconsistent with an existing dedication of the subject property for public use as a park. Therefore, that the amendments may not comply with statutory requirements for vacation of such a dedication provides no basis for reversal or remand. *Sahagian v. Columbia County*, 27 Or LUBA 592 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a challenged decision adopts a new plan policy stating the city will allow a particular commercial-designated area to be developed "to serve both neighborhood commercial needs and as a community commercial center," but declines to change a plan policy that commercial development of the area should be at an intensity consistent with General Office or Neighborhood Commercial zoning, LUBA will remand the decision for the city to interpret the relevant plan and code provisions in the first instance. *Graville Properties, Ltd. v. City of Eugene*, 27 Or LUBA 583 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. When LUBA reviews land use decisions for compliance with relevant approval standards, it does not matter whether the challenged decision is consistent with prior decisions, so long as the decision correctly interprets and applies the applicable standard. *Furler v. Curry County*, 27 Or LUBA 497 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a challenged decision incorrectly concludes arguments based on an arguably applicable comprehensive plan provision are precluded by the acknowledgment of an earlier decision, and does not interpret that plan provision, LUBA must remand the decision for the local government to interpret the plan provision in the first instance. *Rea v. City of Seaside*, 27 Or LUBA 443 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA lacks authority to interpret local comprehensive plan provisions in the first instance. Where certain comprehensive plan policies are arguably applicable to a development application and the challenged decision approving or denying that application does not include an interpretation of those policies, LUBA must remand the decision so the local government can interpret and apply its plan policies. *Barrick v. City of Salem*, 27 Or LUBA 417 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the applicability of local comprehensive plan or land use regulation provisions is ambiguous, the local government is entitled to considerable deference in determining their applicability. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government interpretation of its comprehensive plan and zoning code, that approval of a school at a particular site requires compliance with a plan policy concerning schools, is not so wrong as to be reversible under ORS 197.829, notwithstanding that the relevant zoning district lists schools as a permitted use at the subject site. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners contend a land use regulation amendment fails to comply with the statewide planning goals and implementing rules, and respondents fail to identify specific provisions in the local comprehensive plan that provide the basis for the challenged amendment, LUBA will assume no such provisions exist, and under ORS 197.835(5)(b) LUBA has authority to reverse or remand the land use regulation amendment if it does not comply with the statewide planning goals or implementing rules. *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Statements by individual decision makers made early in the local proceedings, that granting adjustments to code requirements would have a negative impact on the neighborhood, do not show the decision makers ignored applicable criteria in later adopting a final written decision granting the adjustment. It is the final written decision that is subject to LUBA review. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Petitioners' allegations that an applicant cannot simultaneously seek the benefit of two separate local code provisions allowing deviations from code height and setback requirements provide no basis for reversal or remand, where nothing in the code precludes seeking approval under both provisions. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a city has a population of less than 2,500 people, the city's comprehensive plan and land use regulations do not implement the "needed housing" provisions of either ORS 197.307(6) or Goal 10 and, therefore, the city's interpretation of its plan and land use regulations is not subject to reversal or remand on the basis of inconsistency with statutory and goal standards relating to "needed housing." *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government denies an application based on noncompliance with certain comprehensive plan housing policies, petitioners' argument that other plan housing policies should also be applied provides no basis for reversal or remand, where petitioners fail to establish how the local government's failure to apply the other policies undermines its decision to deny the application based on the policies it did apply. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners contend the challenged decision does not demonstrate compliance with an applicable comprehensive plan policy, but fail to explain how the findings adopted by the local government addressing that policy are inadequate, LUBA will reject their contention. *Dorgan v. City of Albany*, 27 Or LUBA 64 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. If petitioners contend the challenged decision fails to demonstrate compliance with certain local comprehensive plan and code provisions that are not addressed in the challenged decision, and those provisions are capable of being interpreted as approval standards under the permissive scope of review standard of ORS 197.829, LUBA must remand the decision to the local government to interpret and apply the plan and code provisions in the first instance. *Dorgan v. City of Albany*, 27 Or LUBA 64 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. 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).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. 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).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. After *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), it is not clear whether general rules of statutory construction are relevant in LUBA review of local government interpretations of their own comprehensive plans and land use regulations. Even if they are, general rules of statutory construction are not absolute. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will defer to local government decisions giving different interpretations to the same language appearing in different sections of its code, where there are related code provisions that provide some justification for the different construction of such identical code language. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government operates within its interpretive discretion under ORS 197.829 when it interprets a code requirement that a proposed conditional use "fully accords with all applicable standards of the County and State Laws or regulations" to be satisfied, where the applicant demonstrates during the local proceedings that there

are "no unusual circumstances or conditions which would prevent [subsequent] issuance of required regulatory approvals." *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA is not required to remand a decision for a local government interpretation of its code, where the interpretive issue raised by petitioner is so untenable that LUBA can reject it without an authoritative determination by the local decision maker. *Towry v. City of Lincoln City*, 26 Or LUBA 554 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government interpretation of its sign ordinance that regardless of whether a sign is an awning, fascia or other sign type, it is subject to certain measurement requirements, is not contrary to the express words, policy or context of the ordinance, and LUBA will defer to it. *Heath Northwest, Inc. v. City of Portland*, 26 Or LUBA 535 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Under ORS 197.829, it is unclear whether LUBA is to defer to a local government interpretation of a prior local government decision or whether LUBA is required to determine whether the local government interpretation is reasonable and correct. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Allegations that the local decision maker failed to disclose ex parte contacts, as required by ORS 215.422(3), provide no basis for reversal or remand where there is no admission by the decision maker or other evidence, either in the record or offered through a motion for evidentiary hearing pursuant to ORS 197.830(13)(b), that an ex parte contact occurred. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Allegations that a local code provision consolidating commonly owned parcels conflicts with ORS 92.017, which provides that a lawfully created lot or parcel shall remain a discrete lot or parcel, are rendered moot and provide no basis for reversal or remand, where the parcels in question were combined in an approved and recorded plat. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA may not interpret a local government's enactments, in the first instance, to determine what constitutes the local approval standards for, and how those standards apply to, a challenged decision. Rather, LUBA is required to review the local government's interpretation of its own enactments. *Rea v. City of Seaside*, 26 Or LUBA 444 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the local code makes filing a transcript of the initial local hearing an essential part of perfecting a local appeal, and contains no provision providing

procedures or standards for granting an extension of time to file such transcript, LUBA will affirm a local government's decision to dismiss a local appeal because the transcript was not filed within the required time. *Bjerk v. Deschutes County*, 26 Or LUBA 439 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A petitioner's assignment of error will be rejected where it simply alleges code violations, without supplying any supporting argument, or alleges inconsistent findings and lack of substantial evidence, without identifying the challenged findings. *Draganowski v. Curry County*, 26 Or LUBA 420 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners contend the challenged decision does not demonstrate compliance with an applicable approval standard, and the decision does not interpret the standard sufficiently for LUBA to review that interpretation and consider petitioners' arguments, LUBA will remand the decision to the local government. *Bottum v. Union County*, 26 Or LUBA 407 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Failure to determine the cumulative impacts of a proposal provides no basis for reversal or remand of a decision unless petitioner establishes that some legal standard requires a determination of cumulative impacts. *City of Barlow v. Clackamas County*, 26 Or LUBA 375 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. In the absence of a legal requirement that a local government determine an applicant's intent with regard to a development proposal, a local government has no obligation to determine such intent or to examine an applicant's prior history of compliance with land use or other regulations. *City of Barlow v. Clackamas County*, 26 Or LUBA 375 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioner fails to identify applicable legal standards regarding wetlands or explain why the proposal violates such applicable legal standards, petitioner supplies no basis for reversal or remand of the challenged decision. *City of Barlow v. Clackamas County*, 26 Or LUBA 375 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. 1993 Oregon Laws, chapter 792, section 43, codifies *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), with the exception that LUBA is not required to defer to a local government's interpretation of its regulations if that interpretation is contrary to a state statute, statewide planning goal or administrative rule which the regulations implement. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Under Oregon Laws 1993, chapter 792, section 43(4), LUBA is

not required to affirm a local government's interpretation of its own code provision if that interpretation is "contrary to a state statute, land use goal or [administrative] rule that the [code provision] implements." *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A county may not amend its transportation plan in ways which conflict with the Oregon Bicycle Bill requirements set out at ORS 366.514(1), even though those statutory requirements would apply in any event. *Bicycle Transportation Alliance v. Washington Co.*, 26 Or LUBA 265 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will reject an assignment of error alleging a local government transportation plan conflicts with Oregon Bicycle Bill requirements concerning provision of bicycle trails, where petitioner fails to show any of the 27 roadway designations included in the transportation plan are incapable of accommodating some form of bicycle trail where ORS 366.514(1) requires that bicycle trails be provided. *Bicycle Transportation Alliance v. Washington Co.*, 26 Or LUBA 265 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. If a local government does not provide notice to DLCDD of a post-acknowledgment comprehensive plan or land use regulation amendment, as required by ORS 197.610 and 197.615, it improperly construes substantive provisions of applicable law and, under ORS 197.835(7)(a)(D), the challenged post-acknowledgment amendment decision must be remanded. *Oregon City Leasing, Inc. v. Columbia County*, 26 Or LUBA 203 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA cannot interpret a local government's ordinances in the first instance, but rather must review the local government's interpretation of its ordinances. Consequently, the failure of the local government to make the initial interpretation of local ordinance provisions is a basis for remand. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners contend the local government may not rely on particular plan provisions in denying a plan map amendment, but the local government did not rely upon those provisions in denying the requested plan map amendment, petitioners' challenge provides no basis for reversal or remand. *Ericsson v. Washington County*, 26 Or LUBA 169 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners contend certain information required by the local code "prior to the approval of subdivisions" must be in the record at the time of tentative plat approval, and the challenged tentative plat approval decision does not interpret the local code with regard to *at what stage* of the subdivision approval process

the required information must be submitted to the county, LUBA must remand the decision for the local government to interpret its code in the first instance. *Cummings v. Tillamook County*, 26 OR LUBA 139 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a question of proper interpretation of a comprehensive plan provision is raised during local proceedings, the interpretation required for LUBA review of the decision on appeal must be provided in the decision. The local government may not supply the interpretation in its brief on appeal. *Eskandarian v. City of Portland*, 26 Or LUBA 98 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Under ORS 197.835(7)(a)(D) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), LUBA must defer to a local government's interpretation of "applicable law" adopted by the local government, regardless of whether that applicable law is a zoning ordinance or conditions of approval imposed by a prior quasi-judicial order. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local decision erroneously concludes a previous local decision did not grant conditional use approval for a nonfarm dwelling where (1) the previous decision states it approves a nonfarm dwelling, and (2) the local government treated the previous application as requesting nonfarm dwelling approval. *Rodriguez v. Marion County*, 26 Or LUBA 50 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government decision determines the effect of a previous decision, LUBA may not review the legal sufficiency of the previous decision. *Rodriguez v. Marion County*, 26 Or LUBA 50 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a member of a decision making body fails to disclose an ex parte contact until after the evidentiary record is closed, ORS 227.180(3) is violated, and LUBA must remand the decision. *Derry v. Douglas County*, 26 Or LUBA 25 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Use of comprehensive plan forestland division standards as an aide in determining whether a property includes sufficient forestland to be designated in the comprehensive plan for forest uses under Goal 4 is not an improper use of the forestland division standards. *Westfair Associates Partnership v. Lane County*, 25 Or LUBA 729 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioner argues the local government erred by approving a conditional use permit without the consent of all owners of the subject property, but

identifies no plan, code or other legal standard requiring that such consent be obtained, LUBA cannot grant relief. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. The proper interpretation of state statutes is a question of law for LUBA to decide, and is not subject to the limitations that *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992) places on LUBA's review of interpretations of local enactments. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a city decision maker receives an ex parte contact, failure to follow the procedures required by ORS 227.180(3) constitutes a basis for remand by LUBA, regardless of whether the party seeking remand objected during the proceedings below. *Horizon Construction, Inc. v. City of Newberg*, 25 Or LUBA 656 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Findings supporting approval of a PUD that determine there are solutions available to various landslide, drainage and related problems affecting the subject property, and that those solutions are possible, likely and reasonably certain to succeed, are adequate to establish that the local government did not improperly defer compliance with relevant PUD standards. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the challenged decision includes contradictory findings regarding compliance with an applicable local code approval standard, LUBA cannot interpret the standard itself, but rather must remand the decision to the local government to interpret the standard in the first instance. *Larson v. Wallowa County*, 25 Or LUBA 537 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. That an existing garage violates lot line setback requirements provides no basis for denial of a requested subdivision of the adjoining property to be served by a private roadway running along the lot line in front of the existing garage. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Arguments that a proposed subdivision roadway alignment violates a Fire Bureau policy provides no basis for reversal or remand of the subdivision approval decision, where the Fire Bureau policy is not a mandatory subdivision approval standard. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. The fact that a challenged local government decision does not include an interpretation of a particular local code provision, alleged to be applicable by petitioners, does not provide a basis for reversal or remand if the code provision in

question is *not* ambiguous or susceptible to different sustainable interpretations. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the local code defines "traveler's accommodations" to include an establishment rented to travelers for a fee, on a daily or weekly basis, and the local government interprets that code definition as not excluding cabins that are occupied by owners for less than 36 days per year, such an interpretation is not clearly contrary to the local code, and LUBA will defer to it. *Friends of the Metolius v. Jefferson County*, 25 Or LUBA 411 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA is required to defer to a local government's interpretation of its own ordinances, so long as the proffered interpretation is not clearly wrong. *Oregon Raptor Center v. City of Salem*, 25 Or LUBA 401 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Petitioners' contention that the local government erred in finding the statewide planning goals do not apply to the challenged decision provides no basis for reversal or remand where the challenged decision also adopts alternative findings addressing the goals, and petitioners do not challenge the adequacy of those findings. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 283 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A local government's failure to establish compliance with aspirational plan provisions which "encourage" and provide guidance about what a local government should do, is not a basis for LUBA to reverse or remand a challenged decision. *Neuharth v. City of Salem*, 25 Or LUBA 267 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. ORS 197.279(2) establishes the procedures required for adoption of a wetland conservation plan. A local government's failure to adopt a wetland conservation plan, provides no basis for reversal or remand of a challenged decision, because local governments are not required to adopt such plans. *Clarke v. City of Hillsboro*, 25 Or LUBA 195 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Although ORS 92.010 to 92.190 do not specifically envision a subdivision approval process that combines approval of a subdivision and a lot line adjustment, neither do those statutes prohibit such a process. Absent such a prohibition, a local government commits no error in following such a combined process. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA is required to defer to a local government's interpretation of its own ordinances, unless that interpretation is contrary to the express words, policy or

context of the local enactment. LUBA may not interpret a local government's ordinances in the first instance, but rather must review the local government's interpretation of its ordinances. *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a relevant ordinance provision is capable of more than one meaning, the challenged decision does not expressly interpret the ordinance provision, and LUBA cannot infer the local government's interpretation from the decision, LUBA must remand the decision for the local government to interpret the provision in the first instance. *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government determines that a recreational cattle roping use was lawfully established on the date restrictive zoning was applied, because it constituted a farm use allowed outright by the subject zone, LUBA will defer to that interpretation so long as it is not clearly contrary to the express words, policy or context of the ordinance. *Smith v. Lane County*, 25 Or LUBA 1 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the term "vacant" in a local government's code is undefined, but the code states that undefined terms have their "normal dictionary meaning," the local government may adopt one of the available ordinary dictionary definitions of the term "vacant," and LUBA will defer to that definition of the term so long as it is not clearly contrary to the context of the code provision in which the term "vacant" is found. *Rhine v. City of Portland*, 24 Or LUBA 557 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will reject a petitioner's contention that a comprehensive plan map amendment does not comply with a plan policy requiring preservation of water quality, where the petitioner fails to challenge findings addressing that plan policy and argues only that a specific development proposal, which is not the subject of the challenged decision, does not comply with that plan policy. *Trumper v. Washington County*, 24 Or LUBA 552 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA may not interpret a local government's ordinances in the first instance, but rather must review a local government's interpretation of its ordinances, and the local government interpretation must be adequate for LUBA's review. *Leabo v. Marion County*, 24 Or LUBA 495 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. If a local government has interpreted the local code in the challenged decision, LUBA must defer to that interpretation unless it is clearly contrary to the enacted language or the apparent purpose or policy of the provision. *Leabo v. Marion County*, 24 Or LUBA 495 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA lacks authority to invalidate LCDC administrative rules. *Reeves v. Washington County*, 24 Or LUBA 483 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where LUBA must determine whether an ambiguous code provision (*i.e.* one that is capable of more than one sustainable interpretation) is applicable to a challenged decision, and the challenged decision does not contain a reviewable interpretation of that provision, LUBA must remand the decision for the local government to interpret the provision in the first instance. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners contend a local government erred in failing to apply a code provision to the challenged decision, and the decision contains no interpretation of that code provision, but the code language unambiguously establishes that the provision in question is not applicable to the challenged decision, LUBA is not required to remand the decision so the local government can interpret its code in the first instance. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. In reviewing a local government's interpretation of its own ordinance, the question LUBA must resolve is not whether the local government interpretation is "right," but rather whether it is "clearly wrong." *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. If a challenged permit decision misconstrues an acknowledged land use regulation, that provides a basis for reversing or remanding the decision under ORS 197.835(6) and (7)(a)(D). It does not mean the challenged decision is a land use regulation amendment. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), the question for LUBA to resolve is not whether a local government interpretation of its own code is "right," but rather whether it is "clearly wrong." *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA may not interpret a local code in the first instance, but rather must review a local government's interpretation of its code. However, a local government interpretation of its code must be adequate for LUBA's review and may not consist of a mere conclusory statement. *DLCD v. Crook County*, 24 Or LUBA 393 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. In rendering a decision on a permit, a city is required to hold at least one public hearing or provide notice of the decision and an opportunity for an appeal. A city's failure to do so requires that the decision be remanded. *Hood River Sand v. City of Mosier*, 24 Or LUBA 381 (1993).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. In the absence of a statutory policy pertaining to forestlands that, like the statutory policy concerning EFU land, requires the preservation of forestland in large blocks, LUBA cannot require that a local government interpret and apply its nonforest use "generally unsuitable" land approval standard in the same manner as the similarly worded statutory standard pertaining to nonfarm uses on EFU land. *DLCD v. Coos County*, 24 Or LUBA 349 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local code requires a proposed nonforest dwelling site to be on land generally unsuitable for forest uses, that standard can be interpreted to mean either that the proposed nonforest dwelling site itself, or that the entire forest parcel, must be generally unsuitable for forest uses. LUBA will defer to the local government's choice between those permissible interpretations. *DLCD v. Coos County*, 24 Or LUBA 349 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners do not explain why specific provisions of a comprehensive plan designation or zoning district applied to forestlands are inconsistent with Goal 4 or the Goal 4 rule, petitioners provide no basis for reversal or remand. *Gonzalez v. Lane County*, 24 Or LUBA 251 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local code requires that one of several considerations must be "achieved" to approve a setback reduction request, and there are adequate findings that one of those considerations is achieved, it provides no basis for reversal or remand that other considerations may not also be achieved. *Barker v. City of Cannon Beach*, 24 Or LUBA 221 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. 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).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will defer to a local government's interpretation of its code so long as the proffered interpretation is not "clearly contrary to the enacted language," or "inconsistent with express language of the ordinance or its apparent purpose or policy."

An interpretation of a local code provision to require that in order to be recognized as separately developable, a parcel must have been in separate ownership on a particular date, is not "clearly contrary" to the terms of, or "inconsistent with the express language" or "apparent purpose or policy" of, the code provision. *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. It is the local government which, in the first instance, should interpret its own enactments. Where a local government has not interpreted and applied applicable provisions of its code, and it is not clear how those code provisions apply to the subject application, LUBA will remand the challenged decision so that the local government may do so. *Gage v. City of Portland*, 24 Or LUBA 47 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the record establishes that a proposed street will have the characteristics of both a local street and minor collector street, the question of the proper street designation is debatable, and the choice of which designation to apply is within the local government's discretion. *Davenport v. City of Tigard*, 23 Or LUBA 565 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government neither adopts findings demonstrating compliance with a permit approval standard, nor finds it is feasible to comply with that standard, but instead defers the required determination of compliance with that standard to a later stage of the approval process where only the applicant has a right to notice and to participation and to appeal the decision, the decision must be remanded. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Under ORS 197.835(5)(b), an amendment to a local government land use regulation is subject to reversal or remand for failure to comply with the Statewide Planning Goals, unless the comprehensive plan contains "specific policies * * * which provide the basis for" the amended regulation. *Ramsey v. City of Portland*, 23 Or LUBA 291 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where, under the correct interpretation of an approval standard and the undisputed relevant facts in the record, the subject application *cannot* satisfy the approval standard, LUBA will reverse a challenged local government decision approving the application. *McKay Creek Valley Assoc. v. Washington County*, 23 Or LUBA 85 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. To the extent an LCDC enforcement order establishes "applicable law" for a land use decision, LUBA is authorized to determine whether the land use decision properly interprets and applies that law. *Schatz v. City of Jacksonville*, 23 Or LUBA 40 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. The prohibition in ORS 271.725(1) against condemnation of conservation easements does not bar a local government from achieving, through its plan and land use regulations, some of the same objectives that it could achieve through conservation easements. *Dodd v. Hood River County*, 22 Or LUBA 711 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Absent zoning ordinance provisions to the contrary, a PUD preliminary master plan approval is a "development permit" and where the zoning ordinance requires that an environmental assessment "be filed prior to the issuance of any development permit," it is error to approve a PUD preliminary master plan prior to the filing of the required environmental assessment. *Gerl v. City of Lincoln City*, 22 Or LUBA 512 (1992).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A city permit decision rendered without providing the public hearing or notice of decision and opportunity for local appeal required by ORS 227.175(3) and (10) must be remanded so that the city may comply with the statutory requirements. *Citizens Concerned v. City of Sherwood*, 22 Or LUBA 390 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government erroneously failed to apply a somewhat ambiguous code provision to the challenged decision, LUBA will remand the decision for the local government to interpret and apply its code provision in the first instance. *J.C. Reeves Corp. v. Clackamas County*, 22 Or LUBA 360 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government erroneously concluded the proposed use is not subject to regulation under its code and, therefore, did not interpret or apply applicable code provisions, LUBA must remand the challenged decision to the local government, so it can interpret its own code in the first instance. *Tylka v. Clackamas County*, 22 Or LUBA 166 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. That a nonconforming use is inconsistent with comprehensive plan provisions that did not exist or apply on the date the use became nonconforming provides no basis for reversal or remand, because ORS 215.130(5) provides the use may continue notwithstanding such inconsistency. *Coonse v. Crook County*, 22 Or LUBA 138 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Erroneous expressions of plan or code interpretation by the decision maker, whether expressed before or after the decision is reduced to writing and becomes final, provide no basis for reversal, if such erroneous expressions are not

included in the written decision or findings supporting the written decision. *Waker Associates, Inc. v. Clackamas County*, 21 Or LUBA 588 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where erroneous plan and code interpretations are not included in a land use decision maker's written decision, they do not constitute a procedural error or irregularity warranting reversal or remand under ORS 197.835(7)(a)(B) or an evidentiary hearing under ORS 197.830(13)(b). *Waker Associates, Inc. v. Clackamas County*, 21 Or LUBA 588 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government approves a conditional use permit for a use that LUBA determines is allowed by neither the local code nor applicable statutes, the decision must be reversed. *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. LUBA will not conclude that a hearings officer, in reviewing a request for conditional use approval, improperly relied on prior land use violations by the applicant to refuse to consider approval with conditions, unless such refusal is clearly stated in the decision. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where the local government failed to interpret and apply a local approval standard to a permit application, and LUBA is unable to determine, as a matter of law, the correct application of the approval standard, LUBA will remand the appealed decision so the local government can interpret and apply the approval standard in the first instance. *Lung v. Marion County*, 21 Or LUBA 302 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government finds that otherwise applicable street width standards need not be satisfied in a proposed subdivision under a local code provision allowing narrower roads where consistent with "a plan for the neighborhood," and petitioners do not challenge that finding, petitioners' arguments that the subdivision violates street width requirements must be rejected. *Southwood Homeowners Assoc. v. City of Philomath*, 21 Or LUBA 260 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Allegations of violation of federal requirements governing National Environmental Policy Act requirements provide no basis for reversal or remand of a decision governed exclusively by state law. *Seto v. Tri-Met*, 21 Or LUBA 185 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where an applicable approval criterion only requires that the challenged decision *identify* certain adverse impacts and *consider* mitigation measures that could be imposed at subsequent approval stages, the local government is not required

to *adopt* mitigation measures as part of the challenged decision. *Seto v. Tri-Met*, 21 Or LUBA 185 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where petitioners contend that under ORS 215.428(3), the county erred by applying standards adopted after their permit application was initially filed, petitioners claim the county "improperly construed the applicable law." ORS 197.835(7)(a)(D). *McCaw Communications, Inc. v. Polk County*, 20 Or LUBA 456 (1991).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Comprehensive plan policies which contain aspirational language regarding goals to be implemented through the adoption of land use regulations are not mandatory approval criteria for individual permit applications and, therefore, it is unnecessary for LUBA to determine whether a decision approving a permit complies with such plan policies. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Absent an argument specifically challenging a local government's findings that a plan amendment and zone change will allow only a rural level of development on the subject rural land, LUBA has no basis to conclude that the county erred in determining its decision complies with Goal 14. *DLCD v. Klamath County*, 19 Or LUBA 459 (1990).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. Where a local government uses a two-stage approval process and determines whether a proposed zoning map amendment complies with applicable goal, plan and land use regulations in the first stage, petitioners may not fail to appeal the first stage approval decision and later assert goal, plan and land use regulation violations in a challenge of the local government's decision granting approval of the second stage. *Headley v. Jackson County*, 19 Or LUBA 109 (1990).

28.8.5 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. The meaning of local legislation is a question of law which must be decided by LUBA on appeal. *Beck v. City of Tillamook*, 18 Or LUBA 587 (1990).