

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where a local government adopts a new zone in one legislative decision and then applies that new zone to property in a separate legislative decision, which is then appealed to LUBA, a challenge that the new zone is contrary to the statewide planning goals may be precluded by acknowledgment of the first decision. However, acknowledgment does not insulate the new zone from a facial challenge on statutory or constitutional grounds, advanced in the appeal of the second legislative decision that for the first time applies the new zone to specific properties. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** ORS 197.625(3) permits a post-acknowledgment land use regulation amendment to take effect as soon as it is adopted, and before the amendment is deemed acknowledged under ORS 197.625(1), if the amendment was “adopted in substantial conformance with ORS 197.610 and 197.615.” Where a post-acknowledgment plan amendment to an erosion control ordinance is appealed to LUBA and is affirmed, LUBA’s decision has the legal effect of establishing that the post-acknowledgment plan amendment was adopted in substantial compliance with ORS 197.610 and 197.615. Whether the post-acknowledgment plan amendment was adopted in substantial compliance with ORS 197.610 and 197.615 may not be raised in a subsequent LUBA appeal of a subdivision decision that applied the amended erosion control ordinance. *Montgomery v. City of Dunes City*, 60 Or LUBA 274 (2010).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** An argument that a decision approving a boundary line adjustment under an acknowledged comprehensive plan and land use regulations violates Goal 4 provides no basis for reversal, where petitioner offers no legal theory for why Goal 4 applies to such a decision. Generally, unless a land use decision adopts new or amended comprehensive plan or land use regulation provisions, a post-acknowledgment land use decision is governed by the acknowledged comprehensive plan and land use regulations and need not apply the statewide planning goals directly. *Lulay v. Linn County*, 60 Or LUBA 432 (2010).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** ORS 197.610(1) and OAR 660-018-0020(1)(c) and (2) require that a local government provide the Department of Land Conservation and Development with a copy of the proposed text of any post acknowledgment comprehensive plan or land use regulation amendment. Where a local government’s notice of its post acknowledgment action does not include the proposed text, remand is required. *SEIU v. City of Happy Valley*, 58 Or LUBA 261 (2009).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Even if a local code provision is deemed by its acknowledgment to comply with any applicable statewide planning goals, acknowledgment does not mean that the provision is deemed to comply with applicable state statutes. *Jouvenat v. Douglas County*, 58 Or LUBA 378 (2009).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** ORS 197.625(3) was adopted in response to the Court of Appeals’ decision in *Von Lubken v. Hood River County*, 118 Or App 246, 249, 846 P2d 1178 (1993), so that post-acknowledgment plan

and land use regulation amendments would take effect on adoption. Under *Von Lubken v. Hood River County*, post-acknowledgment plan and land use regulation amendments did not take effect until they were acknowledged. *NWDA v. City of Portland*, 58 Or LUBA 533 (2009).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** OAR 660-018-0020 does not require that the Department of Land Conservation and Development be provided a redlined version of a post-acknowledgment comprehensive plan amendment. In addition, OAR 660-018-0020 does not provide that any failure on a local government's part to adequately identify the text to be repealed or adopted by a post-acknowledgment comprehensive plan amendment has the legal consequence of requiring that the post-acknowledgment comprehensive plan amendment be viewed as an entirely new comprehensive plan such that unamended portions of the comprehensive plan must be shown to comply with the statewide planning goals. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** An argument that the Department of Land Conservation and Development erred in acknowledging the city's riparian protection ordinance is a collateral attack on the acknowledgment that cannot be advanced in an appeal of a permit decision applying the acknowledged ordinance. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

**4.4 Statewide Planning Goals/ LCDC Rules - Acknowledgment.** Where LCDC approves a periodic review work task and no appeal of that approval is filed with the Court of Appeals, the work task is deemed acknowledged under OAR 660-025-0160(7). Where the LCDC approval of the work task is appealed to the Court of Appeals and affirmed, the work task is acknowledged when the appellate judgment is issued. Where plan amendment that was adopted to respond to the periodic review work task is appealed to LUBA, LUBA has no jurisdiction to review the plan amendment for compliance with the statewide planning goals and therefore acknowledgement of that plan amendment is not delayed until the completion of LUBA's review under ORS 197.625. *Home Builders Assoc. v. City of Eugene*, 52 Or LUBA 341 (2006).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Under *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 250 (1996), LUBA may apply ORS 197.829(1)(d) to review a local government's interpretation of an acknowledged code provision that implements a statewide planning goal, statute or rule only if the code provision is ambiguous. If the code provision is subject to more than one reasonable interpretation, one of which is consistent with the goal, statute or rule implemented, the local government cannot choose an interpretation that is inconsistent with the goal, statute or rule implemented. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** That LCDC acknowledged a 1999 decision including resource land within an urban unincorporated community (UUC) does not mean that LCDC concurred with the county's apparent intent

to later plan and zone the land for non-resource uses. *Oregon Shores Cons. Coalition v. Coos County*, 50 Or LUBA 444 (2005).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** While the acknowledgment process shields local governments from collateral attacks on acknowledged plans and ordinances, any errors the local government may have made in that process do not obviate goal and rule requirements that govern subsequent plan and zoning amendments. *Oregon Shores Cons. Coalition v. Coos County*, 50 Or LUBA 444 (2005).

**4.4 Statewide Planning Goals/ LCDC Rules - Acknowledgment.** Lands that are planned and zoned for resource use under Goals 3 and 4 may be redesignated for nonresource use by applying an acknowledged comprehensive plan policy that establishes standards for such redesignations. Where such a specific policy and local standards have been acknowledged, they apply in place of more general statewide planning goals standards that would otherwise apply to such a redesignation. *Sommer v. Josephine County*, 49 Or LUBA 134 (2005).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Arguments that an acknowledged comprehensive plan policy that rates certain soils as unsuitable for commercial forestry is inconsistent with the county soil survey or uses inaccurate figures are impermissible collateral attacks on the policy. *Doob v. Josephine County*, 48 Or LUBA 227 (2004).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where it is undisputed that a city has adopted a Wetlands Resource Plan that has been acknowledged by LCDC, the acknowledged Wetlands Resource Plan and implementing regulations apply in reviewing an application for subdivision approval and neither Goal 5 nor its implementing regulations apply directly. *Doob v. City of Grants Pass*, 48 Or LUBA 245 (2004).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where a county approves formation of a special district and the county's comprehensive plan is acknowledged, the statewide planning goals do not apply, notwithstanding language in ORS 199.462(1) governing formation of special districts that requires consideration of the statewide planning goals. *Kneeland v. Douglas County*, 48 Or LUBA 347 (2005).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where the county's comprehensive plan makes it clear that it relied on a particular zoning district as its program to protect an existing mining operation from conflicting uses, and that zone allows mining and dwellings as conditional uses, the county does not err in requiring that a conditional use application to reopen that mine after it had been closed for over ten years to demonstrate that the mine would be compatible with nearby dwellings. Any error that the county may have committed in subjecting an existing mine with no conflicts to conditional use review in the future if the mine closed was rendered irrelevant by LCDC's

acknowledgment of the comprehensive plan. *Dundas v. Lincoln County*, 43 Or LUBA 407 (2002).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** A code provision that allows a farm dwelling on a 160-acre rangeland parcel, rather than the minimum 320 acres specified in OAR 660-033-0135(1)(a), may be inconsistent with the rule. However, the county may rely on its code, acknowledged in 2001 to comply with Goal 3 and the Goal 3 rule, notwithstanding any inconsistency with the rule. *Oregon Natural Desert Assoc. v. Harney County*, 42 Or LUBA 149.

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** LCDC’s 1985 acknowledgement of a county’s rural residential zone has the legal effect of establishing that the rural residential zoning district *may* be applied consistent with Goal 14 to rural lands outside a UGB. However, the 1985 acknowledgment does not have the legal effect of establishing that *all* future applications of the zoning district to particular properties, no matter what the circumstances, will necessarily comply with Goal 14. *DLCD v. Klamath County*, 40 Or LUBA 221 (2001).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where a regional transportation plan that is submitted to LCDC for acknowledgment review under ORS 197.251 is also appealed to LUBA, and the issues raised in the petition for review arguably are within LCDC’s jurisdiction under ORS 197.825(2)(c), it is appropriate to suspend the LUBA appeal for 120 days pursuant to ORS 197.840(1) and (4). *Citizens Against Irresponsible Growth v. Metro*, 39 Or LUBA 807 (2001).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Acknowledgement of a land use ordinance establishes only that it is in compliance with the statewide planning goals; it does not exempt a local government from complying with statutory requirements. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** A permit application may be approved based on adopted standards and criteria that are not yet acknowledged. However, under ORS 197.625(3), if the standards and criteria are not ultimately acknowledged, any improvements that have been made in reliance on a permit issued under the unacknowledged standards and criteria may have to be removed. *Western States v. Multnomah County*, 37 Or LUBA 835 (2000).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** New land use regulations can only become acknowledged under ORS 197.625(2) if the ordinance adopting those new land use regulations is “affirmed on appeal under ORS 197.830 to 197.855.” Where LUBA remands the adopting ordinance because a portion of the new land use regulations is found to be defective, without specifically affirming the remaining portions of those regulations, no part of the ordinance is considered acknowledged under ORS 197.625. *Western States v. Multnomah County*, 37 Or LUBA 835 (2000).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Although a decision may qualify as a land use decision subject to LUBA review, ORS 197.825(2)(c) provides

that LUBA lacks jurisdiction to consider statewide planning goal compliance issues in conducting that review, where the challenged decision is also subject to review by LCDC under ORS 197.251. *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** LUBA has no jurisdiction to review provisions of an acknowledged comprehensive plan for compliance with the Transportation Planning Rule, where those plan provisions are not amended by the challenged decision and are not affected by the challenged decision in a way that affects their compliance with the statewide planning goals. *Dept. of Transportation v. Douglas County*, 34 Or LUBA 608 (1998).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where petitioners' arguments are directed at unamended provisions of an acknowledged comprehensive plan rather than the comprehensive plan amendments adopted by the challenged decision, petitioners present no basis for reversal or remand. *Dept. of Transportation v. Douglas County*, 34 Or LUBA 608 (1998).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** ORS 197.835 does not exempt amendments to land use regulations from compliance with applicable administrative rules that implement statutory provisions. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Application of criteria included in an acknowledged comprehensive plan governing redesignation of resource lands does not obviate the requirement that comprehensive plan and land use regulation amendments comply with the statewide planning goals. *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** The Statewide Planning Goals do not apply directly to the approval of a permit under the county's acknowledged comprehensive plan and land use regulations. *McArthur v. Lane County*, 31 Or LUBA 309 (1996).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Once a local government's comprehensive plan and land use regulations are acknowledged under ORS 197.251, the Statewide Planning Goals no longer apply directly to its land use decisions, other than to those decisions which amend the acknowledged plan or regulations. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 429 (1995).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where a county zoning district was acknowledged by LCDC as a forest zone, not a farm/forest zone, a regulation subsequently adopted by LCDC to apply immediately to uses in forest zones applies to uses within that zoning district. *Testa v. Clackamas County*, 29 Or LUBA 383 (1995).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** If a local government's comprehensive plan and land use regulations are acknowledged as being in compliance with the statewide planning goals, and the challenged decision approving a residential subdivision does not amend the local government's plan or land use regulations, the statewide planning goals do not apply to the challenged decision. *McCrary v. City of Talent*, 29 Or LUBA 110 (1995).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where a local government's acknowledged comprehensive plan and land use regulations apply a freshwater wetland designation to certain property, the local government's application of regulations governing freshwater wetlands to development of the subject property is not error, even though comprehensive plan inventory documents suggest the property is in fact a saltwater marsh. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** When adopting a comprehensive plan map amendment, a city can rely on its acknowledged plan and regulations as providing a sufficient number of large parcels of industrially designated land to comply with a plan policy requiring the designation of a sufficient number of such parcels, where the plan map amendment does not affect the inventory or use of such parcels. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** For ORS 197.829(4) to apply to LUBA's review of a governing body's interpretation of its own code, the connection between the local code provision and the statewide planning goal it is arguably designed to implement must be a close one. ORS 197.829(4) was not adopted to allow LUBA to reconsider the propriety of the original acknowledgment of comprehensive plans and land use regulations. *Friends of the Metolius v. Jefferson County*, 28 Or LUBA 591 (1995).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** After acknowledgment, a city is not required to apply the statewide planning goals to land use decisions that do not amend its acknowledged plan or land use regulations. Therefore, a city decision to provide city sewer and water service to development outside city limits does not concern the application of the statewide planning goals. *Fraser v. City of Joseph*, 28 Or LUBA 217 (1994).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** ORS 197.829(4) was not adopted to allow LUBA to reconsider the propriety of the original acknowledgment of comprehensive plans and land use regulations. Identification of an allegedly incorrect *interpretation* of such acknowledged comprehensive plan or land use regulation provisions is a condition precedent for invoking review under ORS 197.829(4). *Historical Development Advocates v. City of Portland*, 27 Or LUBA 617 (1994).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Post-acknowledgment local code amendments which are not adopted to satisfy periodic review requirements are deemed acknowledged under ORS 197.625, if such amendments are not

appealed to LUBA. *Historical Development Advocates v. City of Portland*, 27 Or LUBA 617 (1994).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** LUBA does not have jurisdiction to review LCDC acknowledgment orders. ORS 197.825(2)(c). Subject to review by the appellate courts, once an LCDC acknowledgment order is issued, it forecloses an appeal to LUBA on any issue that was raised or could have been raised in the LCDC acknowledgment proceedings concerning goal compliance. *Redland/Viola CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** The Statewide Planning Goals are not directly applicable to a local government decision that approves a subdivision without amending the local government's acknowledged comprehensive plan. *J.C. Reeves Corp. v. Clackamas County*, 27 Or LUBA 318 (1994).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** If a county's comprehensive plan and land use regulations have been acknowledged by the Land Conservation and Development Commission pursuant to ORS 197.251, the statewide planning goals are *directly* applicable to a challenged land use decision only if the decision amends the county plan. *DLCD v. Fargo Interchange Service District*, 27 Or LUBA 150 (1994).

**4.4 Statewide Planning Goals/ LCDC Rules – Acknowledgment.** Where the county plan and zone designations applied to certain rural property at the time of acknowledgment permit a level of activity that requires sewer service, a petitioner may not challenge proposed development allowed by the acknowledged plan and land use regulations on the basis that the allowed development violates Goals 11 and 14. *DLCD v. Fargo Interchange Service District*, 27 Or LUBA 150 (1994).