

**45.1 Conditions of Approval – Generally.** Where a local government initially approves an application but denies the application after a local appeal, and where LUBA reverses the decision denying the application and orders the local government to approve the application pursuant to ORS 197.835(10)(a), the local government’s subsequent decision approving the application may include any conditions of approval initially imposed by the local government to which the applicant has agreed. *Nieto v. City of Talent*, LUBA No 2020-100 (Mar 10, 2021).

**45.1 Conditions of Approval – Generally.** A stipulation in the applicant’s application materials to adopt regulations in the future to ensure that a sewer system will not serve rural users is insufficient to demonstrate compliance with OAR 660-011-0060(3)(b) and Goal 11 where the applicant provides no explanation of why the stipulation is enforceable. *Jacobus v. Klamath County*, 81 Or LUBA 785 (2020).

**45.1 Conditions of Approval – Generally.** Where a condition of approval requires the applicant to obtain all necessary state and federal permits, the fact that the applicant, shortly after issuance of the decision, files applications to bypass state and federal permit requirements provides no basis for reversal or remand of the decision. *Oregon Shores Conservation Coalition v. Coos County*, 81 Or LUBA 839 (2020).

**45.1 Conditions of Approval – Generally.** A condition of approval requiring a subsequent master planning process to determine the type and design of a fence surrounding a proposed nonfarm use in order to prevent “trespass related impacts” to surrounding lands devoted to farm use is not sufficient to satisfy the farm impacts test at ORS 215.296(1) where the condition excludes potential trespass from the “non-general public,” such as the applicant’s employees and agents, and the condition is not “clear and objective,” as required by ORS 215.296(2), where it does not define “trespass related impacts.” *Schrepel v. Yamhill County*, 81 Or LUBA 895 (2020).

**45.1 Conditions of Approval – Generally.** Where a condition of approval for a nonfarm dwelling provides that “[t]he proposed dwelling site shall be located as represented by the applicant’s written statements and approved site plan” and that “[a]ny deviation from this representation shall require an application for a modification of conditions with the applicable fees subject to the Planning Director’s discretion,” a hearings official misinterprets that condition by concluding that it provides the director discretion regarding whether a modification application will be required; instead, that condition provides the director discretion to review and issue decisions on modification applications. *Matthews v. Lane County*, 81 Or LUBA 757 (2020).

**45.1 Conditions of Approval – Generally.** A condition of approval requiring an applicant to obtain a wetland removal/fill permit from DSL and to provide that permit to a service district with jurisdiction over sewer, water quality, and water quantity prior to conducting any grading work or construction does not violate a local code provision requiring that conditions of approval be “designed to protect the public from potential adverse impacts of the proposed use or development” merely because the condition does not prohibit grading work or construction until any appeals of the DSL permit have concluded. *KB Trees, LLC v. Washington County*, 81 Or LUBA 325 (2020).

**45.1 Conditions of Approval – Generally.** A condition of approval requiring the applicant to deploy flaggers at an intersection to inform attendees that parking is unavailable and deny them entry when parking demand exceeds the available capacity is not inadequate merely because it does not duplicate legal requirements that flaggers receive special training and permits. *Tarr v. Multnomah County*, 81 Or LUBA 242 (2020).

**45.1 Conditions of Approval – Generally.** Where a county approves a petitioner’s application subject to a condition of approval, where the approval requires that the condition be met prior to the expiration of the approval period, where county counsel subsequently sends the petitioner a letter concluding that the petitioner had not satisfied the condition and, thus, that the approval had expired, and where the petitioner does not assert that the letter involves the application of land use regulations or identify any land use regulation that county counsel applied or should have applied, LUBA will conclude that the letter is not a “land use decision,” as defined in ORS 197.015(10)(a)(A), and that LUBA lacks jurisdiction to review it. *Schofield v. Douglas County*, 81 Or LUBA 143 (2020).

**45.1 Conditions of Approval – Generally.** Where a county has approved a petitioner’s application for a nonfarm dwelling subject to a condition of approval; where the petitioner has constructed the nonfarm dwelling and related improvements; where the petitioner appeals a subsequent letter from county counsel concluding that the petitioner had not satisfied the condition and, thus, that the approval had expired; and where LUBA concludes that it lacks jurisdiction to review the letter; but where the county or an opponent may commence an enforcement action requiring the petitioner to remove the nonfarm dwelling and related improvements that may involve the county’s interpretation of the condition, LUBA will conclude that the issues raised in the appeal are not moot and transfer the appeal to circuit court, rather than dismissing the appeal. *Schofield v. Douglas County*, 81 Or LUBA 143 (2020).

**45.1 Conditions of Approval – Generally.** In verifying a nonconforming auto yard use, a local government errs in failing to describe the nature and extent of the auto yard use in a way that imposes an upper limit on the number of vehicles stored on-site, consistent with the upper number present at or approximate to the relevant date. Limiting the physical extent of the auto yard use to that which is visible in an aerial photograph from the relevant year and limiting annual sales of vehicles to the approximate number sold in the relevant year are not sufficient to prevent unauthorized expansion or alteration of the nonconforming use where the operator could stockpile more vehicles on-site, for example, by parking them at tighter intervals or stacking them, than were present in the relevant year. *Morgan v. Jackson County*, 80 Or LUBA 59 (2019).

**45.1 Conditions of Approval – Generally.** Where a prior decision approved a plan amendment and zone change for the subject property and included a condition of approval limiting the type of future development to a “retail shopping center” and the size of future development to a certain square footage of gross leasable area, but where the prior decision approved no specific development, voluntary descriptions, statements, or representations made by the applicant during the prior proceeding regarding the particular store with which the shopping center would be developed are not binding on the applicant in a subsequent site plan review proceeding unless they were memorialized in conditions of approval for the prior decision. *M & T Partners, Inc. v. City of Salem*, 80 Or LUBA 221 (2019).

**45.1 Conditions of Approval – Generally.** A condition of approval requiring an applicant that has applied to site a solar facility in an area currently used for growing Christmas trees to offer a fire safety training course to the local fire district is inadequate to establish that “[t]he proposed use will not \* \* \* significantly increase risks to fire suppression personnel” for purposes of OAR 660-006-0025(5)(b) and local code provisions implementing that rule. *Chang v. Clackamas County*, 80 Or LUBA 321 (2019).

**45.1 Conditions of Approval – Generally.** Local governments are not required to condition approvals rather than deny noncompliant applications. *H2D2 Properties, LLC v. Deschutes County*, 80 Or LUBA 528 (2019).

**45.1 Conditions of Approval – Generally.** Where a city’s code lists a number of “factors” to be considered in approving an annexation, including “[a]dequacy and availability of public facilities and services to service potential development,” but the city’s code does not require that the city identify how infrastructure will be paid for, or by whom, as part of an annexation decision, and the city’s findings suggest the city’s capital improvement program (CIP) will be amended prior to development to list the new water main as a public facility, although the city does not intend to rely upon the CIP as a source of funding or authority for the new water main, petitioners have not established a CIP amendment must be required as a condition of approval or that the city otherwise erred in assigning a positive value to this factor in approving the proposed annexation. *Renken v. City of Oregon City*, 79 Or LUBA 82 (2019).

**45.1 Conditions of Approval – Generally.** Where a city rezones a portion of a property designated mixed use corridor (MUC) on the city’s comprehensive plan, from FU-10 (future urban 10-acre) to NC (neighborhood commercial), and petitioners argue that the NC zone is inconsistent with the city’s comprehensive plan which directs the city to “[f]ocus transit-oriented, higher intensity, mixed-use development along selected transit corridors,” because the subject property is not near a transit corridor, petitioners’ premise—that the MUC plan designation is used only where the city intends to promote transit-oriented development along transit corridors—is incorrect. The MUC plan designation is implemented by four commercial zoning districts: one of which is the NC zone, which is not a transit-oriented zone, and is clearly not intended to be placed along transit corridors. Therefore, the city’s decision to rezone its property to NC is not inconsistent with the property’s MUC comprehensive plan designation. *Renken v. City of Oregon City*, 79 Or LUBA 82 (2019).

**45.1 Conditions of Approval – Generally.** In determining that a landfill does not “[f]orce a significant change” in accepted farm practices on surrounding lands devoted to farm use under ORS 215.296(1)(a), a county errs in relying on a condition of approval requiring the landfill to install a second fence between the working face of the landfill and an adjacent farm to capture more trash that escapes the landfill before it enters onto the adjacent farm, where there is no quantification in the record of how effective the existing fence is at intercepting landfill trash. *Stop the Dump Coalition v. Yamhill County*, 79 Or LUBA 459 (2019).

**45.1 Conditions of Approval – Generally.** When the purpose of a condition is to set a baseline to measure traffic impact throughout multiple phases of the development consistent with the “trip

cap” imposed to meet Transportation Planning Rule, at OAR 660-012-0060 requirements without mitigation, a hearings officer does not err in concluding that the standards are to be interpreted based on the use of the same version of the Institute of Transportation Engineers Trip Generation Manual (ITE Manual). Additionally, the ITE Manual is a professional treatise that sets out methods for making evidentiary judgments regarding the traffic impacts of development, but it is not part of the city’s acknowledged comprehensive plan or land use regulations, and therefore is not itself “standards and criteria” for purposes of ORS 227.178(3)(a) or 227.173(1), at least as applied in the present circumstance, thus compliance with the trip cap be determined by consistent applications of the same ITE Manual codes used to establish the trip cap. *Willamette Oaks LLC v. City of Eugene*, 78 Or LUBA 63 (2018).

**45.1 Conditions of Approval – Generally.** A zone verification is a limited tool and only those issues actually addressed in the zone verification decision are protected from collateral attack. *Richardi v. City of Eugene*, 89 Or LUBA 299 (2018).

**45.1 Conditions of Approval – Generally.** That a county’s amended Transportation System Plan (TSP) includes language recommending that the county acquire property to develop a transportation facility does not mean that whatever land use permits are required to actually construct the facility under the local code or state law are thereby waived. The county could choose to approve whatever land use permits are required under law at the same time it approves an amendment to its TSP, but the latter is not a substitute for the former, or vice versa. *VanDyke v. Yamhill County*, 78 Or LUBA 530 (2018).

**45.1 Conditions of Approval – Generally.** A project applicant is not required to file and win a quiet title action in circuit court as a condition precedent to filing the application simply because another party disputes the applicant’s title to the property on which the proposed development is to occur. When a party disputes the applicant’s title under a legal theory that can only be resolved in circuit court, neither the county nor LUBA is in a position to resolve the legal dispute over whether the applicant/deed owner’s title is good. For that reason, the county is also not obligated to adopt findings resolving the title dispute. In circumstances where consent or lack of ownership has a bearing on an approval criteria, we have held that the decision maker may be required to impose conditions to ensure that the required consent is obtained prior to construction. However, where ownership of the subject property is not an approval criterion, we have never held that the applicant has the obligation to quiet title in the subject property where some doubt is raised during the proceedings below as to the legality of that title, or that the decision maker is obliged to adopt findings addressing the likelihood that the applicant will prevail in a quiet title action. *VanDyke v. Yamhill County*, 78 Or LUBA 530 (2018).

**45.1 Conditions of Approval – Generally.** A condition of approval requiring the applicant to “improve” an existing street to provide 20 feet of “paving” is not ambiguous regarding whether the required improvements include only pavement or also include sidewalks, etc., where the city’s finding that the condition is “roughly proportional” to the impacts of the proposed planned unit development clearly indicate that the required improvements include only paving. *Conte v. City of Eugene*, 77 Or LUBA 69 (2018).

**45.1 Conditions of Approval – Generally.** A hearings officer errs in failing to include a condition approval limiting mining activities to five acres at any one time and requiring reclamation of each five-acre area prior to mining the next five-acre area, given the importance of the proposed five-acre limit to the hearings officer’s conclusion that the mining activities would not have a significant impact on wildlife habitat. *Martucci v. Jackson County*, 77 Or LUBA 252 (2018).

**45.1 Conditions of Approval – Generally.** A hearings officer errs in interpreting a condition of approval for a multi-phase planned unit development (PUD), which requires that the applicant for final phase approval submit a traffic study to determine if additional improvements are necessary to comply with the Transportation Planning Rule, to effectively supersede a different condition of approval applicable to all phases of the PUD that limits maximum development on the site to produce no more than a specified number of vehicle trips, where the two conditions can instead be interpreted to give effect to both. *Willamette Oaks LLC v. City of Eugene*, 76 Or LUBA 187 (2017).

**45.1 Conditions of Approval – Generally.** Where a city council has clear authority under a development code to impose conditions of approval to address potential land use conflicts and traffic congestion, and the city council appears to fail to impose conditions requested by project opponents because it was advised by county staff that it lacked authority to impose such conditions of approval, remand is required to the city council to consider imposition of any conditions of approval that it finds are warranted to mitigate any such potential land use conflicts or traffic congestion. *Hagan v. City of Grants Pass*, 76 Or LUBA 196 (2017).

**45.1 Conditions of Approval – Generally.** A city council does not err by failing to impose a condition requiring that a hotel be reduced in height to address potential land use conflicts, where the city council finds a shorter hotel is not needed to avoid potential land use conflicts. Whether a hotel of the height proposed will present land use conflicts with neighboring properties is a subjective determination, and where LUBA concludes the record establishes the city council’s decision not to impose a condition was within its discretion, LUBA will deny an assignment of error that challenges the city council’s failure to impose the condition. *Hagan v. City of Grants Pass*, 76 Or LUBA 196 (2017).

**45.1 Conditions of Approval – Generally.** A reasonable decision maker could conclude that a 3,050-square-foot Event Center that is marketed to both hotel patrons and to the general public would generate larger events, with far more event attendees, and more traffic and parking demand from off-site than an Event Center that is conditioned to limit the Event Center use to hotel patrons and their guests only. *Hagan v. City of Grants Pass*, 76 Or LUBA 196 (2017).

**45.1 Conditions of Approval – Generally.** A county does not err in failing to process an application to vacate a public easement as a modification of a condition of approval for the subdivision in which the easement is located, where the easement was not required as a condition of subdivision approval, but instead stemmed from a private agreement between the developer and others. *Neighbors for Smart Growth v. Washington County*, 76 Or LUBA 319 (2017).

**45.1 Conditions of Approval – Generally.** LUBA owes no deference to a governing body’s interpretation of a condition of approval imposed by a hearings officer in a prior decision, although

deference may be required for any code interpretations the governing body adopts in the course of interpreting the condition of approval. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

**45.1 Conditions of Approval – Generally.** A county decision interpreting a condition of approval to be satisfied by an agreement between the county and only one of two owners of a common tract is not a “collateral attack” on a prior LUBA decision, in which LUBA assumed, but did not decide, that the same condition of approval would be satisfied by an agreement between the two current owners of the common tract. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

**45.1 Conditions of Approval – Generally.** A circuit court order that requires the two owners of a common tract to enter into an agreement with each other to pay taxes and maintenance costs does not preclude a county from interpreting a partition condition of approval to require one or both tract owners to enter into separate agreements with the county to ensure maintenance of the common tract, or obligate the county to interpret the condition of approval to require the two owners to enter into an agreement with each other. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

**45.1 Conditions of Approval – Generally.** Where a hearings officer approved a partition subject to a condition of approval requiring the developer to record, prior to the sale of any parcels, an agreement to maintain a common tract, but the condition does not identify the necessary parties to the agreement, a county does not err in interpreting the condition to be satisfied by allowing the county to enter into separate agreements with the owners of the common tract to ensure maintenance of the tract. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

**45.1 Conditions of Approval – Generally.** LUBA will affirm an interpretation of a condition of approval requiring an “agreement” to maintain a common tract, such that the required agreement is not limited to Covenants, Conditions and Restrictions (CC&Rs), where the condition does not expressly limit the agreement to CC&Rs. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

**45.1 Conditions of Approval – Generally.** Where a hearings official initially expresses concern that use of an accessory structure for monthly gatherings of over 40 people could not be viewed as “accessory” to the residential use of a forest zoned property, but after the applicant proposed to limit those large parties to no more than four per year concluded that the use qualified as “accessory,” the hearings official was required to impose a condition of approval to limit the proposed accessory use to no more than four large parties per year. *Kaplowitz v. Lane County*, 74 Or LUBA 386 (2016).

**45.1 Conditions of Approval – Generally.** Where an applicant obtains from the city a zoning classification decision concluding that a specific type of housing development is an allowed use, but noting that if the use is changed to provide services to persons other than residents of the development, the development must be approved as a conditional use, and the applicant thereafter seeks and the city approves building permits based on the same specific housing development proposed in the zoning classification decision, the city is not required to impose conditions to preclude the applicant from changing the use to one that requires conditional use approval. *McCullough v. City of Eugene*, 74 Or LUBA 573 (2016).

**45.1 Conditions of Approval – Generally.** Where petitioners concede that a hearings officer was not legally obligated to develop conditions of approval that would make an application for alteration of a nonconforming use approvable, and petitioners proposed no conditions of approval themselves that would have permitted the hearings officer to approve the alteration, petitioners fail to demonstrate error in the hearings officer’s decision. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

**45.1 Conditions of Approval – Generally.** Applicants for quasi-judicial land use permit approval have the burden of proposing any conditions of approval that might be necessary for approval. Local governments frequently develop and impose conditions of approval that they conclude are necessary to approve such applications, but local governments are not obligated to do so. *J. Conser and Sons, LLC v. City of Millersburg*, 73 Or LUBA 57 (2016).

**45.1 Conditions of Approval – Generally.** Where a local government is relying on a particular development or a particular limitation on development to find a relevant approval standard is satisfied, there must be something in place to ensure the relied upon development or limitation will become a reality. That reality could be achieved through a condition of approval or it could be achieved because the desired development or development limitation is part of the approved proposal. *Fernandez v. City of Portland*, 73 Or LUBA 107 (2016).

**45.1 Conditions of Approval – Generally.** Where there are applications pending for permits to construct the redevelopment that will replace a historic resource that is to be demolished, and a demolition permit to carry out a demolition review approval decision may not be approved until those permits have been issued, the redevelopment that the city relied on to find that demolition review criteria are satisfied is adequately guaranteed. *Fernandez v. City of Portland*, 73 Or LUBA 107 (2016).

**45.1 Conditions of Approval – Generally.** Where an ordinance that modified access spacing standards was conditioned so that it would not become effective until a development agreement for construction of roadway improvements specified in the ordinance was executed, execution of a development agreement for improvements that vary significantly from the improvements called for in the ordinance is not sufficient to make the ordinance effective. *Space Age Fuel, Inc. v. Umatilla County*, 72 Or LUBA 92 (2015).

**45.1 Conditions of Approval – Generally.** An assignment of error that argues that the county erred in failing to impose the same conditions of approval that it imposed more than five years earlier in a decision approving the same proposal that has since become void provides no basis for reversal or remand of the decision, where the petitioner does not identify any requirement in the county code or state law or regulation that obligates the county to carry over previously imposed conditions of approval simply because they were imposed five years earlier. *Devin Oil Co., Inc. v. Morrow County*, 72 Or LUBA 240 (2015).

**45.1 Conditions of Approval – Generally.** Any inadequacy in conditions that are not adopted to ensure compliance with any approval criterion is harmless error and does not provide a basis for reversal or remand of the decision. *Truth in Site Coalition v. City of Bend*, 71 Or LUBA 348 (2015).

**45.1 Conditions of Approval – Generally.** Because it is common for a multi-phased tentative subdivision approval to include conditions of approval that apply only to certain phases of development, it is incumbent on a petitioner to raise at the local proceeding any issues involving a legal standard that requires either (1) independent approval of a particular phase of development or (2) the conditioning of construction of an earlier phase of development on fulfillment of conditions applicable to a subsequent phase. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

**45.1 Conditions of Approval – Generally.** A petitioner does not establish that a hearings officer erred in failing to condition approval of the first phase of a multi-phase development on completion of the second phase, where the petitioner does not identify any code standard or condition governing Phase I that will be violated if Phase II is not completed. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

**45.1 Conditions of Approval – Generally.** Modifying a condition of approval to change the source of water used for irrigating landscaping does not obligate the local government to also review and approve a landscaping plan as part of the hearing on the modification, where an unmodified condition provides for review and approval of the landscaping plan as an administrative decision to be issued prior to building permits, and the petitioner’s argument that review of the landscaping plan will be discretionary and must be made under proceedings providing notice and hearing is a collateral attack on the unmodified condition. *Foland v. Jackson County*, 70 Or LUBA 247 (2014).

**45.1 Conditions of Approval – Generally.** A condition of approval requiring “substantial compliance” with a detailed list of specific design features for a proposed commemorative garden is adequate to ensure that the purpose of the condition will be met, notwithstanding that “substantial compliance” gives the applicant some latitude in fulfilling the condition. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

**45.1 Conditions of Approval – Generally.** Remand is required where city code limits a home occupation to 600 square feet in size in an accessory structure, the undisputed evidence is that the home occupation will occupy more than 600 square feet, but the city’s decision simply imposes a condition of approval limiting the home occupation to 600 square feet. *Stevens v. City of Island City*, 68 Or LUBA 112 (2013).

**45.1 Conditions of Approval – Generally.** A zone change applicant’s voluntary representations regarding the density and number of parking spaces that could be constructed under the new zoning are not binding on that applicant’s subsequent design review application that proposes a higher density and fewer parking spaces, where nothing in the zone change criteria required submittal or approval of development plans, and the hearings officer did not consider or rely upon the applicant’s voluntary representations in approving the zone change. *Sellwood-Moreland Improvement League v. City of Portland*, 68 Or LUBA 213 (2013).

**45.1 Conditions of Approval – Generally.** A county does not err in imposing a condition of approval that requires an applicant for a conditional use airport to obtain approval from the Oregon Department of Aviation, where the decision makes clear that the requirement to obtain ODA

approval is not intended as a substitute for analyzing whether the airport is compatible with the surrounding neighborhood. *Yih v. Linn County*, 68 Or LUBA 412 (2013).

**45.1 Conditions of Approval – Generally.** A condition that prohibits an airplane from flying at low altitudes over houses or animals is not impermissibly vague when it is read in context with other related conditions that require take offs and landings to occur only over the Santiam River and prohibit take offs and landings over dwellings. *Yih v. Linn County*, 68 Or LUBA 412 (2013).

**45.1 Conditions of Approval – Generally.** Even if a county is not required to issue Willamette Greenway approvals at the same time it issues a use permit to retroactively approve a wedding event business within the Greenway, a county must nonetheless impose conditions or other measures sufficient to ensure that required Greenway permits will be obtained. *White v. Lane County*, 68 Or LUBA 423 (2013).

**45.1 Conditions of Approval – Generally.** A development code that provides that a permit is void if “conditions of a permit or approval” are not substantially or completely satisfied within two years is properly interpreted to refer to conditions of approval in the permit that are enumerated as such, and the development code need not be interpreted to require substantial or complete construction of other aspects of the development approved under the permit that are not reflected in the conditions of permit approval. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

**45.1 Conditions of Approval – Generally.** Where a development code requires that conditions of permit approval be satisfied within two years after the permit approval becomes final to avoid having the permit approval become void, and satisfying those 38 conditions within two years will be difficult because satisfying some of those conditions of approval would require the applicant to first secure additional approval decisions, a hearings officer is not permitted to interpret the code to require that the applicant only satisfy those conditions of approval that do not require additional approval decisions. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

**45.1 Conditions of Approval – Generally.** Where a development code requires that permit conditions of approval must be substantially satisfied and that “any failure to fully comply with the conditions is not the fault of the applicant,” for a county hearings officer to find that the permit is not void, the hearing officer must be able to find both that all conditions of approval, viewed as a whole, have been substantially exercised *and* that, for any of the conditions of approval where there has been a failure to fully exercise the condition, the applicant is not at fault. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

**45.1 Conditions of Approval – Generally.** Where a development code requires that conditions of permit approval be satisfied within two years after the permit becomes final and provides that the permit approval is void unless the conditions of approval are satisfied “within the time period,” a permit opponent’s argument that the applicant may not rely on actions that were taken to satisfy the condition before the permit was approved is textually plausible. Nevertheless, where LUBA cannot identify any reason why the enactor of the code would have intended that the actions that satisfied the condition of approval must be duplicated “within the time period,” LUBA will not interpret the code to impose such a requirement. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

**45.1 Conditions of Approval – Generally.** Failure to impose a condition of approval requiring the applicant to modify a settlement agreement with neighbors to allow a second dwelling on a rural residential property is not a basis for remand, where the petitioner fails to establish that the settlement agreement limits the number of dwellings allowed on the property. *Purtzer v. Jackson County*, 67 Or LUBA 205 (2013).

**45.1 Conditions of Approval – Generally.** A county does not improperly substitute a condition of approval for a finding that the proposed home occupation will be conducted “primarily in buildings,” where the county finds based on testimony below that the home occupation will be conducted primarily in buildings and the county imposes a condition of approval that no more than 20 percent of any home occupation event may be conducted outside a building. *Green v. Douglas County*, 67 Or LUBA 234 (2013).

**45.1 Conditions of Approval – Generally.** A condition of approval that no more than 20 percent of any home occupation event may be conducted outside a building is not impermissibly imprecise, notwithstanding that neighbors and the county may have different understandings regarding how to analyze and apply that 20 percent limitation. *Green v. Douglas County*, 67 Or LUBA 234 (2013).

**45.1 Conditions of Approval – Generally.** Where a county has authority to impose conditions of approval, a condition that requires a sworn annual report that demonstrates that a farm stand complied with the 25 percent limit on the percentage of sales from a farm stand that are attributable to retail and promotional activity, and that records be kept that confirm the accuracy of the report, is permissible under ORS 215.283(1)(o) and OAR 660-033-0130(23). *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**45.1 Conditions of Approval – Generally.** A farm stand permit that authorizes multiple food carts to sell a variety of prepared food at up to 24 events per year cannot be characterized as “incidental retail sales,” and exceeds the authority granted by ORS 215.283(1)(o) and OAR 660-033-0130(23). *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**45.1 Conditions of Approval – Generally.** ORS 215.283(1)(o) and OAR 660-033-0130(23) do not categorically prohibit food carts in all circumstances. If a permit authorizing a farm stand appropriately limited food carts so that they could be characterized as “incidental retail sales,” they could be authorized at a farm stand. *Greenfield v. Multnomah County*, 67 Or LUBA 407 (2013).

**45.1 Conditions of Approval – Generally.** Where the local government relied on the applicant’s proposal to use a retrenching method to determine that dewatering from the mining operation will not affect groundwater levels of nearby wells and therefore not conflict with agricultural irrigation practices, but no condition of approval requires the retrenching method to be used, remand is required in order for the local government to condition its approval on use of the retrenching method. *Protect Grand Island Farms v. Yamhill County*, 66 Or LUBA 291 (2012).

**45.1 Conditions of Approval – Generally.** A condition specifying future use of a reclaimed mining site is not inconsistent with OAR 660-023-0180(5)(f), which limits post-mining uses to farm uses under ORS 215.203, uses listed under ORS 215.283(1), and fish and wildlife habitat

uses, where the condition requires reclamation for “fish and wildlife habitat” and eventual use “as a public park, if allowed by law.” While ORS 215.203 and 215.283(1) do not currently allow public parks, the condition would only call for use as a public park if the statutes are amended to allow such a use. *Protect Grand Island Farms v. Yamhill County*, 66 Or LUBA 291 (2012).

**45.1 Conditions of Approval – Generally.** An argument below that the challenged ordinance should be conditioned to require rededication of vacated rights-of-way as proposed by the applicant is sufficient to raise the issue of whether a condition requiring rededication is necessary to ensure that the rights-of-way are rededicated. *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

**45.1 Conditions of Approval – Generally.** The failure to impose an express condition requiring that the applicant dedicate a replacement pathway does not warrant remand, where the text of the challenged ordinance states that the applicant will dedicate a replacement pathway, and that text functions as an implicit requirement or condition of approval. *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

**45.1 Conditions of Approval – Generally.** *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), precludes a petitioner from challenging the terms of a condition imposed on remand that is identical to a condition imposed in the original decision, whose terms were not challenged in the initial appeal to LUBA. That the identical terms were embodied in a nominally “new” condition does not allow the petitioner to advance challenges to the decision on remand that could have been, but were not, advanced in the initial appeal. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

**45.1 Conditions of Approval – Generally.** Where the county’s decision on remand and supporting findings state that a condition is imposed requiring the applicant to construct a left-turn lane, a condition to that effect has been adequately imposed, notwithstanding that the county did not expressly amend the list of conditions imposed in its initial decision to include the requirement to construct a left-turn lane. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

**45.1 Conditions of Approval – Generally.** A county is not required to impose a condition prohibiting use of a farm dwelling if the tract on which it is located is no longer used for farm use at a commercial scale. *Oregon Natural Desert Assoc. v. Harney County*, 65 Or LUBA 246 (2012).

**45.1 Conditions of Approval – Generally.** On appeal of a planning commission decision, the issue of the city’s failure to impose a condition is waived under the reasoning in *Miles v. City of Florence*, 190 Or App 500 (2003), where the underlying hearings official’s decision also failed to impose the disputed condition, and petitioner did not specify that failure as a ground for appeal in the local notice of appeal to the planning commission. *Conte v. City of Eugene*, 65 Or LUBA 326 (2012).

**45.1 Conditions of Approval – Generally.** A condition requiring an aggregate company’s trucks to avoid a particular intersection is likely to be effective, where the employer has sufficient authority to require its employees and contract haulers to avoid the intersection and, despite some economic incentives for noncompliance, a reasonable decision maker could rely on the condition

to be effective to prevent impacts on the intersection. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

**45.1 Conditions of Approval – Generally.** An applicant bears the burden of proof to demonstrate that an application complies with applicable approval standards, and a local government is not required to approve a noncomplying development proposal, even if conditions of approval might be imposed that would render the proposal consistent with the applicable criteria. *Wilson v. Washington County*, 63 Or LUBA 314 (2011).

**45.1 Conditions of Approval – Generally.** Well reports generated when wells were dug decades ago are substantial evidence that a reasonable decision maker could rely upon to conclude that the wells can supply sufficient water for a proposed destination resort, where there is no countervailing evidence in the record, and the county addresses the possibility that the well reports are no longer accurate by imposing a condition requiring prior to final master plan approval that the applicant conduct pump tests and, if necessary, dig new wells, to ensure sufficient water. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011).

**45.1 Conditions of Approval – Generally.** Where there is uncertainty regarding the exact location of the jurisdictional line between the Department of State Lands (DSL) and Department of Geology and Mineral Industries (DOGAMI), but agency representatives agree that a proposed mining area is upland of the jurisdictional line and therefore subject to DOGAMI’s jurisdiction, and as a precaution the county imposes a condition requiring that the applicant obtain any permits required by either DSL or DOGAMI, any uncertainty regarding the location of the jurisdictional line does not undermine the county’s finding that DOGAMI has jurisdiction. *Oregon Shores Cons. Coalition v. Curry County*, 61 Or LUBA 8 (2010).

**45.1 Conditions of Approval – Generally.** A hearings officer does not err in concluding that modifying a condition of approval imposing a 20-year deadline to complete development, to allow an additional three years to complete development, is not “materially inconsistent” with the original condition of approval, where the additional time represents only a 15 percent increase and nothing in the original permit approval suggests that the original 20-year completion deadline was intended to be inflexible. *Connecting Eugene v. City of Eugene*, 61 Or LUBA 439 (2010).

**45.1 Conditions of Approval – Generally.** When a local government decides to defer a determination of compliance with an applicable criterion to a later proceeding, the local government cannot escape providing the public processes that would be required if the criterion were applied at the time required by the city’s development code by claiming that the deferred criterion is nondiscretionary or clear and objective. *Boucot v. City of Corvallis*, 60 Or LUBA 57 (2009).

**45.1 Conditions of Approval – Generally.** When relying on a condition of development under OAR 660-012-0060(2)(e) to approve development that would significantly affect a transportation facility, a local government cannot rely on a suggestion in a letter from ODOT when the suggestion is not reflected as a condition of approval. *Walker v. Josephine County*, 60 Or LUBA 186 (2009).

**45.1 Conditions of Approval – Generally.** When a petitioner does not challenge a finding that a right-of-way bisects his property into two non-contiguous units of land, a condition of approval requiring a fence along the right-of-way does not violate a local code provision requiring fences to be along the perimeter of lots or parcels. *King v. Washington County*, 60 Or LUBA 253 (2009).

**45.1 Conditions of Approval – Generally.** If a condition of approval was imposed to ensure compliance with all applicable approval criteria, then a decision modifying that condition of approval must explain why that condition is no longer needed to ensure such compliance. Absent such an explanation, the decision must be remanded. *Oh v. City of Gold Beach*, 60 Or LUBA 356 (2010).

**45.1 Conditions of Approval – Generally.** Where there is substantial evidence in the record that an applicant is not precluded as a matter of law from obtaining state and federal permits, a local government does not err in finding that an applicable comprehensive plan provision that has the legal effect of requiring the applicant to secure state and federal permits is satisfied by imposing a condition of approval that the applicant secure such permits. *Citizens for Responsible Development v. City of The Dalles*, 59 Or LUBA 369 (2009).

**45.1 Conditions of Approval – Generally.** A condition requiring that the applicant for mining restrict rock blasting for up to three days after being notified of Native American cultural or religious visits to a nearby site is sufficient to ensure that noise from blasting will not conflict with such visits. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

**45.1 Conditions of Approval – Generally.** When a local government avoids finding compliance with an applicable approval criterion by deferring determination of compliance to a later proceeding, while the later proceeding must provide for notice and a hearing, the later stage need not have the identical process that was provided during the earlier stage. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190 (2009).

**45.1 Conditions of Approval – Generally.** When an applicable local provision requires that road improvements associated with a partition be constructed or bonded for “before a dwelling may be authorized,” the local governments errs by requiring the improvements to be constructed or bonded for as a condition of approval of the partition itself. *Sperber v. Coos County*, 58 Or LUBA 570 (2009).

**45.1 Conditions of Approval – Generally.** When an approval criterion requires a partition map to show “other features affecting development,” a local government does not misinterpret the applicable law by requiring an applicant to show areas designated as less and least suitable by the comprehensive plan. “Other features affecting development” can encompass physical features themselves as well as comprehensive plan designations based on those features. *Sperber v. Coos County*, 58 Or LUBA 570 (2009).

**45.1 Conditions of Approval – Generally.** Where LUBA reverses a denial under ORS 197.835(10)(a) and orders the local government to approve the “application,” the application includes any (1) applicant-proposed conditions of approval and (2) conditions imposed in an initial decision that the applicant has not objected to or attempted to appeal to the final decision maker.

However, the “application” does not include conditions of approval that the applicant objected to or attempted to appeal to the final decision maker. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

**45.1 Conditions of Approval – Generally.** When a condition of approval was not imposed to ensure compliance with any approval criterion and the condition of approval is not needed to comply with any current approval criterion, a local government may approve a request to modify the condition of approval. *Woodard v. Yamhill County*, 56 Or LUBA 141 (2008).

**45.1 Conditions of Approval – Generally.** A city does not err in imposing a condition of approval limiting the size of an accessory structure in circumstances where an applicant submits a site plan that the applicant freely admits is not visually representative of the actual proposed development. *Caster v. City of Silverton*, 56 Or LUBA 250 (2008).

**45.1 Conditions of Approval – Generally.** A city errs in imposing a condition of approval requiring removal of a structure after a certain specified time period where the existence or removal of that structure is not a relevant issue on review and the applicant does not consent to the condition that the city imposed. *Caster v. City of Silverton*, 56 Or LUBA 250 (2008).

**45.1 Conditions of Approval – Generally.** Where a land use regulation approval standard requires a “minimum of two points of access,” a hearings officer errs by approving a permit application without imposing a condition of approval that the second access that is needed to comply with the land use regulation requirement must actually be provided. *Central Oregon Landwatch v. Deschutes County*, 56 Or LUBA 280 (2008).

**45.1 Conditions of Approval – Generally.** A warning that subdivision approval could become void in the future if certain owners of the subdivided property who have been granted Ballot Measure 37 waivers cease to own the property is a legally insufficient substitute for a condition of approval that the holders of the needed Ballot Measure 37 waivers must retain their ownership interest until the final plat is recorded. *Hines v. Marion County*, 56 Or LUBA 333 (2008).

**45.1 Conditions of Approval – Generally.** Where a county engineer testifies that the applicant may need to acquire “vision easements” if necessary and the county imposes a condition of approval to that effect, the county is not required to adopt a finding that it is “feasible” for the applicant to obtain such easements from neighbors, absent some indication that there is a legal or practical impediment to obtaining the easements. *Gardener v. Marion County*, 56 Or LUBA 583 (2008).

**45.1 Conditions of Approval – Generally.** A local government is not obligated to impose a condition of approval requiring that a broadcast tower operator comply with federal radio frequency exposure limitations that the applicant must comply with in any event. *Curl v. City of Bend*, 56 Or LUBA 746 (2008).

**45.1 Conditions of Approval – Generally.** Provided local law does not dictate a different result, local governments generally may approve a proposed development of land after providing any required notice and hearings—without finding that the proposal complies with all relevant approval

criteria—so long as the local government defers the required findings to a later stage and ensures that a second opportunity for any required notice and public hearing is provided before the required findings are adopted at that later stage. *Meadow Neighborhood Assoc. v. Washington County*, 55 Or LUBA 472 (2007).

**45.1 Conditions of Approval – Generally.** It may not be appropriate to grant conditional approval while deferring required findings to a subsequent approval stage, even where there will be a full public right to participate in the subsequent approval stage, where the initial decision has the effect of rendering the subsequent review moot or prevents meaningful review. However, where the initial decision has no legal or preclusive effect on the subsequent review, such conditional approval provides no basis for reversal or remand. *Meadow Neighborhood Assoc. v. Washington County*, 55 Or LUBA 472 (2007).

**45.1 Conditions of Approval – Generally.** Even if ORS 197.522 applies outside the context of a moratorium to require the city to approve development that can be made consistent with applicable criteria through reasonable conditions, the statute places on the applicant the burden of proposing reasonable conditions. A proposed condition requiring petitioner to share the cost of future signalization of an intersection if future conditions warrant is not sufficient to ensure that the development is consistent with a standard requiring that affected intersections function at or above a minimum level of service. *Vista Construction LLC v. City of Grants Pass*, 55 Or LUBA 590 (2008).

**45.1 Conditions of Approval – Generally.** Where the Oregon Department of Transportation (ODOT) recommends that conditions of approval be imposed requiring the improvements identified in a traffic impact analysis, and the city’s decision states that it will impose the conditions but in fact does not, the petitioner may assign error to the city’s failure to impose the conditions, notwithstanding that the petitioner raised no issues below regarding the improvements or the conditions, because ODOT adequately raised the issue. *Nygaard v. City of Warrenton*, 55 Or LUBA 648 (2008).

**45.1 Conditions of Approval – Generally.** The absence of explicit conditions of approval mandating that a rezoning applicant construct necessary transportation improvements is not necessarily reversible error, where the local government expressly incorporates the traffic analysis that requires the improvements, and thus the decision itself requires the improvements. However, remand is necessary to adopt conditions of approval where the decision does not purport to incorporate the traffic analysis or require the necessary improvements to be constructed. *Nygaard v. City of Warrenton*, 55 Or LUBA 648 (2008).

**45.1 Conditions of Approval – Generally.** Remand is necessary where the rezoning decision relies on conditions of approval to comply with OAR 660-012-0060(4)(b)(B), which requires that the city ensure that necessary transportation improvements are actually funded, but fails to impose any such conditions. *Nygaard v. City of Warrenton*, 55 Or LUBA 648 (2008).

**45.1 Conditions of Approval – Generally.** A finding that it is feasible to incorporate design features into a turn lane to render it safe is an insufficient basis to conclude that the turn lane complies with applicable criteria, where the hearings officer fails to impose any conditions

requiring that such design features be used. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

**45.1 Conditions of Approval – Generally.** Where a local government finds that an access standards is met and imposes a condition of approval requiring a formal survey of property to ensure that access to a proposed subdivision does not infringe on adjacent property, that is not the same thing as deferring a finding of compliance with that access standard to a later stage of the approval process. *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007).

**45.1 Conditions of Approval – Generally.** Under ORS 197.522 and similarly worded local law requirements, a city is obligated to consider and impose any conditions of approval proposed by the permit application if such conditions would allow the city to approve a conditional use permit application that would otherwise not meet approval criteria. However, under those authorities the city is not obligated to take the initiative to develop such conditions on its own or develop the evidentiary record that might be needed to impose such conditions. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

**45.1 Conditions of Approval – Generally.** Where a local government finds that OAR 660-012-0060 is satisfied, the findings adopt and incorporate the applicant’s traffic impact analysis (TIA), and the TIA includes mitigation measures, the local government does not err in failing to expressly impose a condition of approval requiring those mitigation measures to be implemented. *Hildenbrand v. City of Adair Village*, 54 Or LUBA 734 (2007).

**45.1 Conditions of Approval – Generally.** Where a city’s code does not expressly authorize a city to impose a condition requiring annexation on its decision approving an application to partition unincorporated land, but the code only authorizes the city to approve partitions of unincorporated lands that are subject to an annexation agreement and the city’s only other option would be to deny the partition application, the city correctly interprets its code to approve the application with the annexation agreement condition. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (2007).

**45.1 Conditions of Approval – Generally.** A local government does not err in failing to impose a condition of approval ensuring that the final planned unit development plan contains senior housing consistent with the approved tentative plan, where the tentative plan includes such housing and an ordinance requires that the final plan can only be approved if it is “substantially consistent” with the tentative plan. *NE Medford Neighborhood Coalition v. City of Medford*, 53 Or LUBA 277 (2007).

**45.1 Conditions of Approval – Generally.** Where neither the local government nor LUBA has jurisdiction to resolve the legality of a condition requiring necessary facilities to be constructed prior to obtaining final approval of a two-step subdivision approval process, the local government may (1) adopt findings establishing that fulfillment of the condition of approval is not precluded as a matter of law, and (2) ensure that the condition will be fulfilled prior to final subdivision approval or actual development. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

**45.1 Conditions of Approval – Generally.** LUBA need not resolve the parties’ legal dispute over whether a condition of subdivision approval requiring construction of a street through a

neighboring development is consistent with conditions, covenants and restrictions governing that neighboring development, where only the circuit court has jurisdiction to finally resolve that dispute, and the local government has adequately established an alternative basis to impose the condition regardless of how that legal dispute is resolved. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

**45.1 Conditions of Approval – Generally.** LUBA will reject a petitioner’s challenge to a condition of subdivision approval requiring construction of a public street in a neighboring subdivision notwithstanding that the street may violate covenants, conditions, and restrictions (CC&Rs) governing that neighboring subdivision, where the city adequately demonstrates that it has statutory authority to condemn the land and construct the street notwithstanding the CC&Rs, and the city adequately ensures that the condition requiring construction of the street will be fulfilled prior to final development approval. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

**45.1 Conditions of Approval – Generally.** LUBA will affirm a hearings officer’s finding that it is feasible to expand an existing stormwater facility without infringing on the neighboring petitioner’s rights to the existing capacity of that facility, where there is no evidence that the expansion will affect the capacity of the existing pond, and the hearings officer imposed conditions sufficient to ensure that the expansion will not infringe on the existing capacity. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

**45.1 Conditions of Approval – Generally.** A finding that expansion of an existing stormwater facility will improve problems with the existing facility, combined with a condition of approval requiring that the expanded facility not exacerbate existing problems, is sufficient to address concerns raised by petitioner that the expanded facility might exacerbate existing overflow problems. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

**45.1 Conditions of Approval – Generally.** Absent some authority to the contrary, a local government need not approve a property line adjustment necessary to effect a proposed subdivision prior to or contemporaneously with adopting the preliminary subdivision approval. A finding that it is feasible to obtain a property line adjustment, combined with a condition requiring that the adjustment be obtained prior to final subdivision approval, is sufficient. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

**45.1 Conditions of Approval – Generally.** A local government is not obligated to impose of site plan approval that prohibits a use that is not in fact proposed or approved, simply because it is possible that at some future date the structures authorized by the site plan might be used in a manner prohibited by the code. *Friends of the Metolius v. Jefferson County*, 51 Or LUBA 188 (2006).

**45.1 Conditions of Approval – Generally.** While the fact that a proposed development would be inconsistent with private CC&Rs is not a basis, in and of itself, for reversal or remand, the fact that a condition of approval necessary to meet approval criteria is not feasible because the condition cannot be satisfied because it violates CC&Rs may be a basis for reversal or remand. *Butte Conservancy v. City of Gresham*, 51 Or LUBA 194 (2006).

**45.1 Conditions of Approval – Generally.** Remand is necessary to either withdraw a condition of approval requiring fencing around a property or explain what criterion it relates to and what purpose it serves, where the decision approves development in part and denies it in part, and it is not clear whether the condition of approval relates to approved or denied aspects of the proposed development. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

**45.1 Conditions of Approval – Generally.** Where a petitioner claims that a sewer provider does not have an easement across his property to reach necessary access to a sewer main, a finding that such an easement does exist, that the easement could be condemned if necessary, and imposition of a condition of approval requiring that the easement be obtained is sufficient to establish that it is feasible to provide sewer service. *Stoloff v. City of Portland*, 51 Or LUBA 560 (2006).

**45.1 Conditions of Approval – Generally.** Nothing in ORS 197.522 prevents a local government from imposing conditions of approval “to make the proposed activity consistent with the plan and applicable regulations.” *Ghena v. City of Grants Pass*, 50 Or LUBA 552 (2005).

**45.1 Conditions of Approval – Generally.** Where it appears that providing access to phase 1 of a proposed subdivision is feasible, but the tentative plat application does not show how access will be provided, a hearings officer does not err in imposing a condition of final plat approval requiring that the applicant provide a specific plan for access to phase 1. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

**45.1 Conditions of Approval – Generally.** A city may approve a master plan of development for 1000 dwelling units that could damage wetlands or threaten recovery of endangered western lilies on the site, provided the city imposes a condition of approval that requires the city to revisit the legal requirements to protect the wetlands and western lilies, at the time of detailed development plan approval, when the hydrologic assessment necessary to evaluate each phase of the proposed development against those legal standards will be available. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

**45.1 Conditions of Approval – Generally.** An expert’s letter that merely suggests further study, possible future actions, considerations and thoughts, and potential alternatives is too imprecise or hypothetical to provide adequate conditions of approval. *Baker v. City of Garibaldi*, 49 Or LUBA 437 (2005).

**45.1 Conditions of Approval – Generally.** When a petitioner challenges findings deferring compliance with applicable approval criteria, that petitioner must: (1) identify the applicable approval criteria; (2) identify the findings that defer consideration of those criteria; and (3) explain how that deferral is inadequate to ensure compliance with the approval criteria. *O’Shea v. City of Bend*, 49 Or LUBA 498 (2005).

**45.1 Conditions of Approval – Generally.** There is no generally applicable requirement that conditions of approval be stated in clear and objective language, or impose only mandatory, unambiguous, easily enforced obligations. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

**45.1 Conditions of Approval – Generally.** Federal law preempts local zoning conditions of approval that are imposed to regulate radio frequency interference. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**45.1 Conditions of Approval – Generally.** It does not matter whether conditions that are imposed to regulate radio frequency interference are imposed under general zoning conditional use criteria or local regulations that were adopted to regulate radio frequency interference directly. It is the purpose for imposing the condition that is important, and if the condition is imposed to regulate radio frequency interference, it is preempted by federal law. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**45.1 Conditions of Approval – Generally.** Federal law does not preempt local laws that regulate the visual and aesthetic impact of radio towers and the antennas placed on those towers. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**45.1 Conditions of Approval – Generally.** A governing body’s interpretation that it has authority to modify a condition of preliminary subdivision plat approval under a code standard allowing “minor changes” to an unrecorded subdivision plat is not reversible under ORS 197.829(1). *Cove at Brookings Homeowners Assoc. v. City of Brookings*, 47 Or LUBA 1 (2004).

**45.1 Conditions of Approval – Generally.** A decision that allows modifications to an existing berm intended to protect a neighboring subdivision from sight and smells of the city sewage treatment plant is consistent with that subdivision’s conditions of approval, where the conditions do not require a berm of any particular size, shape or height, and the decision allows only modifications that do not degrade the function of the berm. *Cove at Brookings Homeowners Assoc. v. City of Brookings*, 47 Or LUBA 1 (2004).

**45.1 Conditions of Approval – Generally.** Where a non-duplicative plat name is a criterion for preliminary plat approval, a city does not err by granting preliminary plat approval without a plat name and imposing a condition of approval that the applicant submit a non-duplicative plat name prior to final plat approval. For such an approval criterion, it is at most harmless error that the city failed to find that it is feasible for the applicant to submit the required non-duplicative plat name. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

**45.1 Conditions of Approval – Generally.** Where a local government’s findings explain that a subdivision applicant’s plan for achieving visual clearance is adequate and that the applicant is negotiating with the adjoining property owner to secure the easement that will be necessary to implement that plan and is confident that the easement can be secured, the local government does not err by failing to require that the applicant obtain the easement prior to preliminary plan approval and failing to find that it is feasible for the applicant to secure the easement. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

**45.1 Conditions of Approval – Generally.** Assuming ORS 197.522 is applicable outside the moratoria context, that statute does not require a local government to develop on its own conditions of approval that would render proposed development compliant with applicable criteria, as an

alternative to denial. Rather, the initial burden of proposing conditions to make development consistent with applicable criteria belongs to the applicant. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

**45.1 Conditions of Approval – Generally.** ORS 197.522 does not require a local government to reopen the record after reaching a tentative decision to deny a development application, to allow the applicant an opportunity to propose conditions that would allow approval. Rather, the applicant must propose such conditions during the evidentiary proceedings or in making final legal arguments to address concerns raised during the proceedings and ensure compliance with applicable criteria. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

**45.1 Conditions of Approval – Generally.** 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 (2002).

**45.1 Conditions of Approval – Generally.** Where a zoning ordinance specifically requires that development proposals be approved through design review at the time a permit is requested for development, a local government is not required to duplicate that mandate through a condition of approval at the time the property is rezoned. *Swyter v. Clackamas County*, 40 Or LUBA 166 (2001).

**45.1 Conditions of Approval – Generally.** When a city imposes a condition on development approval and relies on that condition in both its initial approval and its reapproval after withdrawing the decision for reconsideration, a petitioner’s failure to raise issues regarding the condition during the evidentiary proceedings on reconsideration precludes petitioner from challenging the adequacy or validity of the condition in a subsequent LUBA appeal of the decision on reconsideration. *DLCD v. City of Warrenton*, 40 Or LUBA 88 (2001).

**45.1 Conditions of Approval – Generally.** A condition of approval limiting sales of nonfarm-related items in a farm feed store to 10 percent of total sales, rather than the 10 to 20 percent of total sales that the applicant proposed, does not make such a significant change in the permit application that a new application must be required. *Barge v. Clackamas County*, 39 Or LUBA 183 (2000).

**45.1 Conditions of Approval – Generally.** Where a condition of approval for preliminary plat approval does not require the condition to be fulfilled as a condition of final plat approval, whether or not the condition is satisfied is a matter of post-approval enforcement rather than a basis to find the final plat not in conformance with the preliminary plat approval. *Bauer v. City of Portland*, 38 Or LUBA 715 (2000).

**45.1 Conditions of Approval – Generally.** A local government may find compliance with approval criteria by finding that the proposed means to achieve compliance is feasible, and imposing conditions of approval to ensure that the criteria are met. In the alternative, a local government may defer finding compliance with the criteria, but only by observing statutory notice

and hearing requirements when making the deferred finding of compliance. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

**45.1 Conditions of Approval – Generally.** Testimony from a state reclamationist and a specialist in river mechanics combined with a condition requiring that a future engineering study precede any expansion of the mining area is sufficient to demonstrate feasibility that mining and reclamation will not increase the potential for channel recapture or exacerbate impacts from flooding. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

**45.1 Conditions of Approval – Generally.** A condition of approval that is suggested by the applicant after the close of the evidentiary hearing in a quasi-judicial land use proceeding is not “new evidence,” within the meaning of ORS 197.763(6)(e), and there is no legal requirement that parties be given a right to rebut such a proposed condition of approval. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

**45.1 Conditions of Approval – Generally.** A condition of approval that the applicant will provide a sanitary sewer capacity study and identify the location and ownership of utility infrastructure and easements does not demonstrate that adequate public utility systems are available or could be extended to service the proposed development as required by local ordinance. *Highland Condominium Assoc. v. City of Eugene*, 37 Or LUBA 13 (1999).

**45.1 Conditions of Approval – Generally.** A finding that a proposed subdivision will be connected to the city’s storm drainage system is not supported by substantial evidence, where the proposed drainage system stops short of the city’s storm drainage system and a condition of approval requiring paved access to the subdivision is not adequate to ensure that the storm drainage connection will be constructed along with that paved access. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

**45.1 Conditions of Approval – Generally.** There is no applicable legal standard that requires a city to have a reasonable basis for refusing to impose a requested condition of approval that a subdivision access road be blocked to all but emergency travel. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

**45.1 Conditions of Approval – Generally.** A staff recommendation regarding appropriate conditions of approval that is submitted after the close of the evidentiary hearing is not new “evidence” that might, if submitted by one of the parties, trigger an obligation to reopen the record for rebuttal. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

**45.1 Conditions of Approval – Generally.** Where a PUD condition of approval requires that certain issues be resolved prior to preliminary plat approval of Phase 7 of the PUD, LUBA will affirm as reasonable and correct a city’s interpretation of that condition to allow Phase 7A to be approved in advance of Phase 7B without resolving those issues. *Claus v. City of Sherwood*, 35 Or LUBA 437 (1999).

**45.1 Conditions of Approval – Generally.** A condition of approval limiting the hours of operation is supported by substantial evidence where the city council found that loading and unloading of

vehicles next to an adjoining residential area during irregular hours would create a nuisance and the Oregon State Police impose a similar limitation on towing of impounded vehicles. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

**45.1 Conditions of Approval – Generally.** A city may impose a condition requiring annual review of a conditional use approval under a general code provision allowing conditions of approval the city council determines are necessary “to avoid a detrimental impact.” *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

**45.1 Conditions of Approval – Generally.** The standard LUBA applies when considering evidentiary challenges to conditions of approval is relatively low. *Botham v. Union County*, 34 Or LUBA 648 (1998).

**45.1 Conditions of Approval – Generally.** In determining whether a proposed quarry expansion should be approved, the local government must find it is feasible to comply with applicable environmental standards addressing air and water quality and noise. In doing so, it is appropriate to impose conditions of approval and defer responsibility for monitoring compliance to planning and engineering staff at a later stage of development. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

**45.1 Conditions of Approval – Generally.** Where an issue is raised below whether a condition imposed in a prior land use decision supplies an applicable approval standard in subsequent land use decisions, the local government must determine whether the condition is an applicable criterion for approval and, if so, whether it is satisfied. *Bradbury v. City of Bandon*, 33 Or LUBA 664 (1997).

**45.1 Conditions of Approval – Generally.** A local government cannot defer its obligation to make findings of compliance with applicable approval criteria to a state agency. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

**45.1 Conditions of Approval – Generally.** A local government may impose conditions necessary to ensure compliance with applicable water availability criteria only when the findings adequately establish that compliance with those criteria is feasible. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

**45.1 Conditions of Approval – Generally.** When compliance with a particular code standard is deferred, a condition to ensure eventual compliance is required even when compliance depends upon the local government rather than the applicant. *DLCD v. Tillamook County*, 33 Or LUBA 163 (1997).

**45.1 Conditions of Approval – Generally.** To defer making a necessary discretionary determination beyond the date that a UGB amendment becomes final creates a possibility the UGB will be amended before Goal 14 is satisfied. Either (1) a determination that all standards requiring discretion in their application are satisfied must be made prior to the amendment of the UGB itself; or (2) the UGB amendment must be conditioned on making the necessary determination at a time

subsequent when the statutory notice and hearing requirements are observed. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

**45.1 Conditions of Approval – Generally.** Without findings explaining why, for purposes of a conditional use approval, a 13,660-square-foot church 33 feet high is “essentially the same size and height” as a “12,000 +/-”-square-foot church 29 feet high, LUBA cannot affirm that it is. *Southeast Neighbors United v. Deschutes County*, 32 Or LUBA 227 (1996).

**45.1 Conditions of Approval – Generally.** A city cannot determine there will be compliance with a criterion prohibiting adverse impacts on residential zones by imposing a condition that requires abatement of that adverse impact. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

**45.1 Conditions of Approval – Generally.** Where there is no evidence regarding the nature and scope of a proposed development, the city cannot rely upon conditions of approval in finding compliance with a comprehensive plan policy. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

**45.1 Conditions of Approval – Generally.** A local government may find compliance with an applicable criterion by either (1) finding that the criterion is satisfied; or (2) finding that it is feasible to satisfy the criterion and imposing conditions necessary to insure compliance. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

**45.1 Conditions of Approval – Generally.** Where a county acknowledges an incompatibility between a proposed nonfarm use and surrounding farm uses, it cannot determine that the proposed use satisfies the requirement that it be compatible through the imposition of a condition which will mitigate but not resolve the incompatibility. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

**45.1 Conditions of Approval – Generally.** Conditions of approval do not substitute for establishing compliance with applicable criteria; before the county can impose conditions of approval, it must first establish that the criteria can be satisfied. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

**45.1 Conditions of Approval – Generally.** The attachment as an exhibit to the city’s decision of a plot plan showing 3.95 acres of “open space” does not impose an unstated condition of approval requiring dedication of the open space, when the text of the decision makes clear it does not rely on that aspect of the plot plan. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

**45.1 Conditions of Approval – Generally.** If a city relies on the preservation of open space to make a finding that there will be adequate buffering between commercial and residential uses, the city must condition approval on the designation of a specifically described parcel as open space. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

**45.1 Conditions of Approval – Generally.** When a challenged decision justifies amendments to the city’s comprehensive plan and zoning maps by relying on a particular development proposal, approval of the amendments must be conditioned on implementation of that proposal. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

**45.1 Conditions of Approval – Generally.** Local government approval of a subdivision tentative plan, with a condition that prior to final plat approval the plan be reconfigured to provide only one access point from the subdivision onto adjoining roads, a change advocated in an alternative plan submitted by neighbors, does not constitute approval of a new subdivision application. *Carter v. Umatilla County*, 29 Or LUBA 181 (1995).

**45.1 Conditions of Approval – Generally.** Because the second sentence of Oregon Laws 1991, chapter 3, section 7(1)(b), imposes limitations on a local government’s authority to impose conditions on a local permit for a light rail transit facility, the local government has the burden of demonstrating that any conditions that are not required by Tri-Met’s “final order” comply with these limitations. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**45.1 Conditions of Approval – Generally.** Even if a condition of land use approval is not an “exaction” subject to the “rough proportionality” requirement of *Dolan v. City of Tigard*, conditions of land use approval must support some legitimate planning purpose and must be authorized by the local government’s comprehensive plan or land use regulations. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

**45.1 Conditions of Approval – Generally.** Aside from the requirement under *Dolan v. City of Tigard* for an “individualized determination” justifying a condition of approval imposing an exaction, there is no generally applicable requirement that conditions of land use approval be supported by findings that justify imposing the condition. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).