

25.11 Local Government Procedures – Action After Remand. While the issues following a LUBA on remand are often fewer and smaller in scope, in order to exhaust or preserve issues for LUBA’s review under the reasoning in *Miles v. City of Florence*, 190 Or App 500, 506-07, 79 P3d 382 (2003), local appeals of decisions on remand must still identify the issues for local appeal with sufficient specificity that the local government and other parties have reasonable notice of those aspects of the underlying decision on remand the local appellant wishes to challenge. *Dion v. Baker County*, 72 Or LUBA 307 (2015).

25.11 Local Government Procedures – Action After Remand. When LUBA remands a land use decision, absent some authority to the contrary the decision becomes ineffective, and remains ineffective unless and until the local government takes action on remand to re-adopt the decision or otherwise render the decision or portions of it effective. *Willamette Oaks LLC v. City of Eugene*, 68 Or LUBA 162 (2013).

25.11 Local Government Procedures – Action After Remand. The fact that a city believed it was making a decision on the last day allowed by the ORS 227.181 for a decision after remand does not absolve the city from following the procedures applicable to quasi-judicial hearings, including giving all parties the opportunity to respond to new evidence submitted at the hearing. The city could have rejected the new evidence and avoided the procedural conundrum that it apparently believed it faced or could have left the record open to respond to the new evidence under ORS 197.763(4)(b). *Poe v. City of Warrenton*, 66 Or LUBA 108 (2012).

25.11 Local Government Procedures – Action After Remand. Where a city development code requires a hearing before the planning commission before planned development approval but does not specifically require a second hearing before the planning commission where a planned development approval is appealed to LUBA and remanded, the city need not hold a second hearing before the planning commission where LUBA’s remand does not require an additional hearing. *Rosenzweig v. City of McMinnville*, 66 Or LUBA 164 (2012).

25.11 Local Government Procedures – Action After Remand. Where petitioners’ were allowed to present evidence during the hearings on a decision that is appealed to LUBA and remanded, the city need not allow petitioners a second opportunity to enhance their evidentiary presentation following LUBA’s remand where neither the city’s regulations nor LUBA’s remand require a further evidentiary hearing. *Rosenzweig v. City of McMinnville*, 66 Or LUBA 164 (2012).

25.11 Local Government Procedures – Action After Remand. Where on remand of a decision that amends a county zoning ordinance, the county adopts a new ordinance with new amendments, but does not explicitly or implicitly re-adopt the original ordinance, on appeal to LUBA of the new ordinance the petitioner cannot challenge the original ordinance or the findings adopted on remand that are intended to support the original ordinance. *Hatley v. Umatilla County*, 66 Or LUBA 265 (2012).

25.11 Local Government Procedures – Action After Remand. Where the local government on remand from LUBA conducts a single, consolidated proceeding that results in adoption of two ordinances and an order, on appeal of the two ordinances to LUBA the record includes the unappealed order, because the order was placed before the final decision maker during the proceedings on the ordinances. *Hatley v. Umatilla County*, 66 Or LUBA 427 (2012).

25.11 Local Government Procedures – Action After Remand. An order that simply adopts additional findings following a LUBA remand, but does not “change” any acknowledged comprehensive plan or land use regulation, is not a post-acknowledgment plan amendment, and the deadline to appeal the order to LUBA is therefore 21 days from the date the decision became final, pursuant to the first sentence of ORS 197.830(9), not 21 days from the date that notice of the order was mailed. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

25.11 Local Government Procedures – Action After Remand. When a decision to sell public park property is remanded to consider comprehensive plan policies after the local government only considered the public interest standard of ORS 275.330, there is no absolute requirement that the local government hold another public hearing on the ORS 275.330 public interest standard. *Kaye v. Marion County*, 62 Or LUBA 57 (2010).

25.11 Local Government Procedures – Action After Remand. When LUBA remands an ordinance that changes the zoning for property, the ordinance becomes legally ineffective to rezone the property and the property’s zoning reverts to its prior zoning. *Turner v. Jackson County*, 62 Or LUBA 199 (2010).

25.11 Local Government Procedures – Action After Remand. Nothing in ORS 197.763(3) requires that the notice of a hearing on remand summarize LUBA’s bases for remand, and such bases for remand are not “applicable criteria” that must be listed in the notice of remand hearing. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

25.11 Local Government Procedures – Action After Remand. Where LUBA remands a decision by sustaining one or more assignments of error, it does not necessarily mean that LUBA agreed with every argument or sub-argument the petitioner advanced in the sustained assignments of error, or that on remand the local government must address every argument in the petition for review under those assignments of error. Instead, the local government must address the issues described in the portion of LUBA’s opinion remanding the decision. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

25.11 Local Government Procedures – Action After Remand. LUBA will not resolve arguments that a \$660 fee to conduct a hearing on remand is inconsistent with ORS 215.422, where the county notified the petitioner/applicant of the hearing fee but ultimately held the remand hearing without requiring petitioner to pay the fee. Under these circumstances, LUBA’s resolution of the issue would be advisory. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

25.11 Local Government Procedures – Action After Remand. Where the Court of Appeals adopts an interpretation of a city plan policy and the city’s decision is remanded because the Court of Appeals concludes the city’s and LUBA’s interpretation of the plan policy in approving an urban growth boundary amendment was erroneous, the city is free following remand to amend the plan policy, and is not bound to reapply the plan policy to the urban growth boundary amendment as it was interpreted by the Court of Appeals. *Hildenbrand v. City of Adair Village*, 58 Or LUBA 43 (2008).

25.11 Local Government Procedures – Action After Remand. The provisions of ORS 197.763(6), dealing with when and how hearings may be continued or the record left open for additional evidence, only apply to the initial evidentiary hearing in a proceeding. Any evidentiary hearing on remand from LUBA is not the initial evidentiary hearing and ORS 197.763(6) does not apply. *Wetherell v. Douglas County*, 56 Or LUBA 120 (2008).

25.11 Local Government Procedures – Action After Remand. If a hearing is not the initial evidentiary hearing as is usually the case on remand, when a party submits new evidence as part of its rebuttal to another’s party’s evidence, as long as that new evidence is limited to rebutting the other party’s evidence the other party has no right to surrebuttal. *Wetherell v. Douglas County*, 56 Or LUBA 120 (2008).

25.11 Local Government Procedures – Action After Remand. Where a petitioner raises an issue and LUBA rejects that issue but remands a permit decision on other grounds, the petitioner may not raise the rejected issue for a second time in the local government’s decision on remand. *Save Our Skyline v. City of Bend*, 55 Or LUBA 12 (2007).

25.11 Local Government Procedures – Action After Remand. A local government may limit its proceedings following a remand from LUBA to addressing the issues that led to the remand and may select the procedures it believes are most appropriate, provided those procedures do not improperly exclude any parties who are entitled to participate in those remand proceedings. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

25.11 Local Government Procedures – Action After Remand. A party who otherwise has standing to participate in a city’s land use public hearings under the city’s land use legislation may not be denied standing to participate in public hearings following a remand from LUBA, simply because he or she failed to participate in the LUBA appeal. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

25.11 Local Government Procedures – Action After Remand. Where a local government erroneously decides that certain parties may not participate regarding certain issues in public hearings following a LUBA remand, but then nevertheless allows those parties to participate fully, the initial error would likely not result in prejudice to the parties’ substantial rights. However, where the record in fact supports a conclusion that the parties’ testimony on the disputed issues was not considered, the parties’ substantial rights were prejudiced. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

25.11 Local Government Procedures – Action After Remand. While ORS 227.181(1) requires a city to take final action on a permit decision within 90 days of LUBA remand, once the applicant requests that the city proceed with the application on remand, nothing in the statute prohibits an applicant from essentially abandoning a remanded approval decision and instead filing a new or different application. In that circumstance, the city is under no obligation to address issues directed at the prior decision. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

25.11 Local Government Procedures – Action After Remand. Where the petitioner raises a number of issues, some directed at a remanded decision that is not before the city, and others at the application that is before the city, and the city prudently adopts findings addressing all issues raised, the findings that address issues regarding an application that is not before the city are surplusage and not binding on the city or parties, and LUBA will not address challenges to those findings. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

25.11 Local Government Procedures – Action After Remand. There is no requirement that local government decision makers personally read LUBA’s opinion remanding a decision before taking action on remand. If the decision makers, or their legal staff or planners, misread a LUBA opinion and thereby make mistakes on remand, it is those mistakes that potentially provide a basis for assignments of error in a subsequent appeal – not the decision maker’s failure to personally read LUBA’s decision. *Sommer v. Josephine County*, 54 Or LUBA 507 (2007).

25.11 Local Government Procedures - Action After Remand. Where the local government on remand allows the permit applicant an opportunity to rebut the permit opponent’s response to the new evidence, it must allow other parties an opportunity to rebut the permit opponent’s response; but the local government is not obligated on remand to allow other permit opponents an additional opportunity to enhance their evidentiary presentation. *Rice v. City of Monmouth*, 53 Or LUBA 55 (2006).

25.11 Local Government Procedures – Action After Remand. When on remand a local government conducts an evidentiary hearing regarding a modified application, the local government may not restrict participation in the public hearing to parties to the original LUBA appeal. *Lengkeek v. City of Tangent*, 52 Or LUBA 509 (2006).

25.11 Local Government Procedures – Action After Remand. Where LUBA remands a preliminary subdivision plat approval to the local government to address an issue, the local government may limit the hearing on remand to that issue, and need not address as part of the remand hearing other issues raised by petitioner regarding whether detailed development plans required by the preliminary plat approval are inconsistent with the approved conceptual plans approved. *Frewing v. City of Tigard*, 52 Or LUBA 518 (2006).

25.11 Local Government Procedures – Action After Remand. Under a code provision prohibiting *ex parte* contacts “in connection with any issue involved in the hearing,” petitioner fails to demonstrate that communication between staff and the decision maker involving potential donation of land on the property is an indirect *ex parte* contact with the developer, where the remand hearing is limited to a single issue, and potential donation of land has nothing to do with that remand issue. *Frewing v. City of Tigard*, 52 Or LUBA 518 (2006).

25.11 Local Government Procedures – Action After Remand. Local governments are generally required to provide notice of proceedings on remand to the parties before LUBA, even if those parties would not otherwise be entitled to notice under the code. However, such notice is not necessarily required where, following remand, the local government elects to proceed on what is essentially a new and different application involving the same property, under code procedures that do not require notice. *Sullivan v. Polk County*, 51 Or LUBA 107 (2006).

25.11 Local Government Procedures – Action After Remand. When the local government limits the scope of review on remand to issues raised in the petition for review before LUBA, those issues include arguments made in support of the assignments of errors, not merely the text of the assignments of error themselves. *Dauenhauer v. Jackson County*, 51 Or LUBA 539 (2006).

25.11 Local Government Procedures – Action After Remand. ORS 227.180(1) requires that a local government take action within 90 days of the date LUBA remands a decision or within 90 days of the date of final resolution of judicial review. ORS 227.180(1) does not authorize a local government to take action on a decision before LUBA prior to the effective date of LUBA’s order or the date of the Court of Appeals’ appellate judgment, if LUBA’s decision is appealed to the court. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

25.11 Local Government Procedures – Action After Remand. Under *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647 (1989), absent statutory authority to the contrary, a local government has no jurisdiction to modify a land use decision that is before LUBA or the Court of Appeals. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

25.11 Local Government Procedures – Action After Remand. When an earlier decision was remanded by LUBA based on issues regarding the safety of a proposed road design, and the local government specifically limits the remand proceedings to the issues remanded by LUBA, petitioners may not challenge the proposed road’s location under the local government’s transportation system plan when that locational issue could have been, but was not raised, in the earlier appeal. *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005).

25.11 Local Government Procedures – Action After Remand. Absent some code requirement to the contrary, a local government is not obligated to require a new

application when the applicant proposes modifications to a site plan on remand from LUBA, although the local government must offer all parties the opportunity to submit testimony and evidence with respect to the proposed modifications. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

25.11 Local Government Procedures – Action After Remand. Remand is necessary where, on remand from LUBA, the local government approves unspecified modifications to an approved site plan without addressing issues raised on remand regarding whether those modifications are consistent with applicable criteria. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

25.11 Local Government Procedures – Action After Remand. Where LUBA’s remand of a county decision does not necessarily require that the county conduct additional evidentiary proceedings to respond to the remand, and (1) petitioner does not advise a county hearings officer that she believes it would be error for the county not to reopen the record to receive evidence that was not presented in the first appeal and (2) it is at least questionable whether county planning staff were responsible for the failure to include that evidence in the record of the first appeal, the hearings officer’s decision not to reopen the record on remand is not error. *Bradley v. Washington County*, 47 Or LUBA 11 (2004).

25.11 Local Government Procedures – Action After Remand. When an applicant on remand modifies the application that led to the remanded decision, the local government proceedings on remand represent a continuation of the original application rather than a new application. Therefore, the local government record that led to the LUBA appeal is properly part of the record on remand unless specifically excluded by the local government. *Rutigliano v. Jackson County*, 47 Or LUBA 628 (2004).

25.11 Local Government Procedures – Action After Remand. A petitioner’s argument that a city’s erroneous notice regarding the date it would reconsider a decision following remand from LUBA provides no basis for reversal or remand, where petitioner’s entire argument is based on an erroneous assumption that an evidentiary hearing was required on remand and that the notice the city gave did not comply with ORS 197.763(2). *McFall v. City of Sherwood*, 46 Or LUBA 735 (2004).

25.11 Local Government Procedures – Action After Remand. A local government does not err in failing to provide an evidentiary hearing on remand to accept updated information regarding the current status of petitioner’s property, where LUBA’s remand did not require the local government to conduct additional evidentiary hearings, and petitioner fails to identify any authority that requires the local government to conduct an additional evidentiary hearing to accept updated information. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

25.11 Local Government Procedures - Action After Remand. That a local government moves for a voluntary remand of a land use decision does not necessarily mean that the remanded decision is substantively flawed. On remand the local government may be able to correct procedural errors or correct defects in its findings and, thereafter, readopt the same substantive decision. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

25.11 Local Government Procedures - Action After Remand. In moving for a voluntary remand, a local government need not confess error and it need not confess error in its proceedings following remand. The local government's obligation in considering a decision following a voluntary remand is to conduct whatever additional proceedings may be necessary to allow it to correct any errors or possible errors there may be in the original decision, so that it can adopt a decision that it can defend in any further appeal. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

25.11 Local Government Procedures – Action After Remand. A city denial of petitioners' request for an evidentiary hearing after remand from LUBA is not error, where (1) petitioners had an opportunity to present evidence and argument during the city's initial proceedings; (2) the city did not apply new approval criteria or consider new evidence in making its decision on remand; and (3) petitioners do not provide a reason why the initial evidentiary proceedings were inadequate to address petitioners' application. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

25.11 Local Government Procedures – Action After Remand. A remand from LUBA for a city to adopt a written decision that identifies the applicable criteria and explains why the city concludes that those criteria have or have not been met does not bind the city to apply *only* those criteria that formed the basis for the city's initial decision to deny the application. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

25.11 Local Government Procedures – Action After Remand. Absent instructions from LUBA or applicable local requirements, a local government is entitled to limit the scope of remand proceedings to correcting the deficiencies that were the basis for LUBA's remand, although it may also choose to expand the scope of remand proceedings beyond the scope of LUBA's remand. *CCCOG v. Columbia County*, 44 Or LUBA 438 (2003).

25.11 Local Government Procedures – Action After Remand. Where LUBA's remand requires the county to resolve an issue regarding three tax lots, but the county on remand accepts evidence on broader issues, the county's error, if any, in confining its final decision to resolving the dispute regarding the three tax lots is harmless, given that the county could have initially chosen to confine the remand proceeding to the basis for LUBA's remand. *CCCOG v. Columbia County*, 44 Or LUBA 438 (2003).

25.11 Local Government Procedures – Action After Remand. A petitioner fails to demonstrate that he was entitled to an evidentiary hearing before the local government following a remand from LUBA under *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998), where the arguments petitioner sought to present in that evidentiary hearing on remand were legal arguments rather than an expanded evidentiary presentation. *Dimone v. City of Hillsboro*, 44 Or LUBA 698 (2003).

25.11 Local Government Procedures – Action After Remand. ORS 215.435 requires that a local government take final action on remand from LUBA within 90 days after the applicant requests in writing that the county proceed. Absent a local provision that establishes a deadline or limit that is consistent with that statute, a local government has no authority to terminate proceedings on remand or require that the applicant submit a

new application, based on delay in initiating the request to proceed on remand. *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002).

25.11 Local Government Procedures – Action After Remand. A local government is entitled to limit the scope of issues on remand to correcting the deficiencies that were the basis for remand. Where a local government does so, issues that could have been raised during the previous appeal, but were not, may not be raised on remand. *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002).

25.11 Local Government Procedures – Action After Remand. Even where no specific statutory or local provisions govern limits on presentation of evidence on remand from LUBA, the parties have a fundamental right during an evidentiary proceeding to present and rebut evidence. An evidentiary proceeding on remand that fails to offer any opportunity to rebut new evidence submitted on remand is inconsistent with *Fasano v. Washington Co. Comm.*, 264 Or 574, 503 P2d 23 (1973). *Crowley v. City of Bandon*, 43 Or LUBA 79 (2002).

25.11 Local Government Procedures – Action After Remand. Where the record demonstrates that the local government did not incorrectly believe it was legally required to limit its scope of review on remand to the two issues that were identified in LUBA's remand, the local government commits no error in limiting its review on remand to the two issues that formed the basis of the remand. The city is entitled to so limit its scope of review on remand if it wishes. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

25.11 Local Government Procedures – Action After Remand. A local government's decision to request that an applicant prepare revised findings to respond to a LUBA remand does not, by itself, obligate the local government to provide a hearing following LUBA's remand. *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 185 (2001).

25.11 Local Government Procedures – Action After Remand. Parties that seek to demonstrate that a local government erred by adopting an interpretation of local land use legislation after the opportunity for argument and evidentiary presentations closes must demonstrate (1) that the interpretation was unforeseeable, and (2) that the party can produce new evidence that is different from evidence in the record and is directly responsive to the unanticipated interpretation. *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998). *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 185 (2001).

25.11 Local Government Procedures – Action After Remand. Where LUBA remands a land use decision for inadequate findings, parties have no unqualified right to demand a hearing to present additional argument or evidence under *Morrison v. City of Portland*, 70 Or App 437, 689 P2d 1027 (1984). *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 185 (2001).

25.11 Local Government Procedures – Action After Remand. Where, on remand from LUBA, the local government adopts a procedure that is proposed by the parties and that

allows all sides to submit written evidence and written rebuttals, but limits oral testimony at the evidentiary hearing before the local government to summaries and explanations of previous submittals, the procedure is not correctly interpreted to prohibit an oral explanation of previously submitted evidence that includes additional supportive facts in response to the previously submitted written rebuttal. *Terra v. City of Newport*, 40 Or LUBA 286 (2001).

25.11 Local Government Procedures – Action After Remand. The law of the case doctrine does not apply to an appeal of a new application, even if that application is similar to a prior application that resulted in a decision that was remanded by LUBA. *Durig v. Washington County*, 40 Or LUBA 1 (2001).

25.11 Local Government Procedures – Action After Remand. When the record of a final decision made after remand of an earlier decision from LUBA also includes the record from the earlier decision, but portions of the record from the earlier decision no longer exist, photocopies of the earlier record may be included in the record on remand. If, however, portions of the earlier record are unavailable, re-creations of the earlier record will not be included in the record, if one of the parties objects to the re-creation. *Terra v. City of Newport*, 39 Or LUBA 811 (2001).

25.11 Local Government Procedures – Action After Remand. Where an initial decision denying a rezoning request is remanded by LUBA, a city decision following remand to approve the rezoning request may be required to address issues the city was not required to address in its initial decision. *Anderson v. City of Medford*, 38 Or LUBA 792 (2000).

25.11 Local Government Procedures – Action After Remand. Because a local government's proceedings on remand from LUBA are a continuation of its original proceedings and not a new proceeding, a local government that has sent notice of a proposed post-acknowledgment plan amendment to DLCDC as required by ORS 197.610 is not required under the statute or rules implementing the statute to send additional notice of the proposed amendment during the remand proceedings. *Northwest Aggregates Co. v. City of Scappoose*, 38 Or LUBA 291 (2000).

25.11 Local Government Procedures – Action After Remand. Because ORS 227.180(3) protects the participants' right to a decision that is free of undisclosed *ex parte* communications, redressing a violation of the statute on remand requires more than reopening the record to disclose and offer an opportunity to rebut the substance of those communications. Although the city need not repeat the evidentiary proceedings leading up to the initial decision, the city must adopt a new decision approving or denying the application based on the record as a whole, including any evidence submitted in rebuttal. *Opp v. City of Portland*, 38 Or LUBA 251 (2000).

25.11 Local Government Procedures – Action After Remand. A local government decision on an application for land use approval that is made without disclosing or offering an opportunity to rebut an *ex parte* communication must be remanded for a plenary rehearing on the application. *Opp v. City of Portland*, 38 Or LUBA 251 (2000).

25.11 Local Government Procedures – Action After Remand. Petitioners are not precluded from raising arguments on appeal that pertain to assignments of error that were raised, but not finally decided, in a prior appeal to LUBA on the same application. *Friends of Yamhill County v. Yamhill County*, 38 Or LUBA 62 (2000).

25.11 Local Government Procedures – Action After Remand. An issue that could have, but was not, raised in the initial petition for review before LUBA in an appeal that was voluntarily remanded, may not be included in an assignment of error in a later appeal of a decision following remand. *Riggs v. Douglas County*, 37 Or LUBA 432 (1999).

25.11 Local Government Procedures – Action After Remand. Where a local government elects to conduct additional hearings prior to making a decision following remand of a decision by LUBA, all parties to the LUBA appeal that led to the remand are entitled to some form of individualized notice of the proceedings on remand, and a local government's failure to provide notice to one of those parties is procedural error. *DLCD v. Crook County*, 37 Or LUBA 39 (1999).

25.11 Local Government Procedures – Action After Remand. A party's right to appeal a local decision that is adopted following a remand by LUBA does not eliminate prejudice to that party's substantial rights caused by the local government's failure to provide notice of its proceedings on remand. The rights the party has in seeking LUBA review of the decision on remand are much more circumscribed than the rights the party has during a local land use hearing. *DLCD v. Crook County*, 37 Or LUBA 39 (1999).

25.11 Local Government Procedures – Action After Remand. Absent land use regulations that specify a particular procedure when a decision is withdrawn for reconsideration pursuant to OAR 661-010-0021, the procedures that govern depend on what stage in the process the local government returns to on reconsideration. Procedures governing evidentiary hearings are not applicable when the local government does not reopen the evidentiary record during the reconsideration proceedings. *McElroy v. City of Corvallis*, 36 Or LUBA 185 (1999).

25.11 Local Government Procedures – Action After Remand. Where a county code applies the same "stability" standard that is required by ORS 215.284(1)(d) and (2)(d) for nonfarm dwellings to approval of recreational vehicle parks, it is not bound by case law that interprets and applies the statutory standard, where LUBA did not determine in its decision remanding the decision to the county that it must interpret the code standard in the same manner that the statute has been interpreted. *Ray v. Douglas County*, 36 Or LUBA 45 (1999).

25.11 Local Government Procedures – Action After Remand. A local decision maker is entitled to limit its considerations on remand from LUBA to correcting the deficiencies identified in LUBA's remand decision. *Port Dock Four, Inc. v. City of Newport*, 36 Or LUBA 68.

25.11 Local Government Procedures – Action After Remand. Where LUBA determined in an earlier appeal of the county's approval of a nonconforming use that the

nonconforming use was not established by a prior county decision approving site design review for that use, the law of the case doctrine prohibits the county, on remand, from revisiting the issue decided by LUBA. *Marquam Farms Corp. v. Multnomah County*, 35 Or LUBA 392 (1999).

25.11 Local Government Procedures – Action After Remand. The law of the case doctrine does not bar petitioner from arguing that the city’s action on remand from LUBA so altered the proposed development that the city must revisit a variance granted in the original decision. *Dodds v. City of West Linn*, 35 Or LUBA 101 (1998).

25.11 Local Government Procedures – Action After Remand. A decision on remand that increases a variance from a maximum lot coverage standard is not inconsistent with the initial variance approval, where the initial decision did not specify the variance allowed from the maximum lot coverage. *Dodds v. City of West Linn*, 35 Or LUBA 101 (1998).

25.11 Local Government Procedures – Action After Remand. Absent local procedures to the contrary, a local government is not required to follow all of the procedures required for the initial decision when the decision is withdrawn for reconsideration following appeal to LUBA under OAR 661-010-0021 and readopted without changes. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

25.11 Local Government Procedures – Action After Remand. On remand, a county may prepare new findings without opening the record if it determines its findings were inadequate. A county may reopen the record to accept additional evidence if it determines there is not substantial evidence in the record upon which findings of approval can be based. . *Roberts v. Crook County*, 33 Or LUBA 267 (1997).

25.11 Local Government Procedures – Action After Remand. Even if petitioner was not afforded an opportunity below to present argument and rebuttal on the issue of how the city should proceed on remand, petitioner has not demonstrated prejudice to its substantial rights where it was provided both an adequate opportunity to prepare and submit a case and a full and fair hearing. *Prineville Properties, Inc. v. City of Prineville*, 32 Or LUBA 139 (1996).

25.11 Local Government Procedures – Action After Remand. In some circumstances, issues decided by LUBA and not appealed may not be further considered after remand to the local government. However, when the local government reopens the record on remand, new issues may be raised and may be the basis for a new decision, or grounds for a subsequent appeal. *Prineville Properties, Inc. v. City of Prineville*, 32 Or LUBA 139 (1996).

25.11 Local Government Procedures – Action After Remand. Nothing prohibits a city from weighing existing evidence differently and reaching a different decision on remand. *Prineville Properties, Inc. v. City of Prineville*, 32 Or LUBA 139 (1996).

25.11 Local Government Procedures – Action After Remand. Where, on remand from LUBA, the county corrects an error in its decision, it is not required to follow the procedures that were required during the initial proceeding. *Richards-Kreitzberg v. Marion County*, 32 Or LUBA 76 (1996).

25.11 Local Government Procedures – Action After Remand. When a local government limits its remand proceedings to issues that were the basis for LUBA's remand order, issues that were not raised in the first appeal, and are not within the scope of the issues that were the basis for LUBA's remand, cannot be raised in a subsequent appeal to LUBA. *O'Rourke v. Union County*, 31 Or LUBA 174 (1996).

25.11 Local Government Procedures – Action After Remand. Where LUBA remanded a previous appeal because the county did not apply relevant agricultural goal and implementation policies of its comprehensive plan, the county's conclusion on remand that its previous findings were sufficient is not adequate. *Brown v. Coos County*, 31 Or LUBA 142 (1996).

25.11 Local Government Procedures – Action After Remand. A statement in a staff report prepared prior to a hearing on remand that certain criteria need not be considered on remand does not itself broaden the scope of the remand to include consideration of those criteria. *Melton v. City of Cottage Grove*, 30 Or LUBA 331 (1996).

25.11 Local Government Procedures – Action After Remand. When, prior to an appeal to LUBA, a city satisfies the coordination requirement of OAR 660-12-060(3) by consulting with the county, and the development proposal does not change between LUBA's remand order and a second appeal, the city is not required to consult with the county again during the proceedings on remand. *Melton v. City of Cottage Grove*, 30 Or LUBA 331 (1996).

25.11 Local Government Procedures – Action After Remand. Petitioner was not prejudiced by the city's decision not to accept new evidence on remand, where petitioner made its arguments in the original hearing and the city considered them. *ONRC v. City of Oregon City*, 30 Or LUBA 258 (1995).

25.11 Local Government Procedures – Action After Remand. A local government's violations of the notice provisions of ORS 197.763 in its original proceedings do not permit a petitioner who fails to raise certain issues during proceedings on remand to elude the waiver provisions of ORS 197.835 during a second appeal to LUBA. *Noble v. City of Fairview*, 30 Or LUBA 180 (1995).

25.11 Local Government Procedures – Action After Remand. To the extent parties were not properly apprised of the applicable criteria during the initial hearing, they must be provided the information required by ORS 197.763(3)(b) on remand. *Noble v. City of Fairview*, 30 Or LUBA 180 (1995).

25.11 Local Government Procedures – Action After Remand. When petitioner was apprised by the local government of the applicable criteria, but failed to raise an issue before the local government during proceedings on remand, ORS 197.835(3) precludes petitioner from raising the issue on appeal to LUBA. *Noble v. City of Fairview*, 30 Or LUBA 180 (1995).

25.11 Local Government Procedures – Action After Remand. When LUBA's remand order requires the county to address one code provision, the fact that certain issues raised under that code provision are also addressed by another code provision does not broaden the scope of the remand order to include the latter. *Reeves v. Yamhill County*, 30 Or LUBA 135 (1995).

25.11 Local Government Procedures – Action After Remand. Where the city's findings of compliance with an ambiguous provision are inadequate and unresponsive to the issues raised by petitioners, on remand the city must specifically respond to those issues and explain its conclusions. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

25.11 Local Government Procedures – Action After Remand. Unless required by LUBA's remand order or a local regulation, a local government does not have to repeat on remand the procedures applicable to the initial proceedings. *East Lancaster Neigh. Assoc. v. City of Salem*, 30 Or LUBA 147 (1995).

25.11 Local Government Procedures – Action After Remand. Where LUBA remands a decision because the local decision maker failed to adopt findings explaining its determination of compliance with relevant approval standards, and the local decision maker was not required to hold a hearing before making its initial decision, the local decision maker is not required to hold a hearing on remand. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

25.11 Local Government Procedures – Action After Remand. Absent code provisions to the contrary, when a local government decision is remanded by LUBA, the local government is not required to repeat the procedures applicable to the initial proceedings, unless LUBA's remand specifically requires that those procedures be followed. *Sanchez v. Clatsop County*, 29 Or LUBA 26 (1995).

25.11 Local Government Procedures – Action After Remand. Where LUBA remands a local government decision because it lacks findings of compliance with relevant approval standards, the local government must, at a minimum, conduct a hearing on remand to allow the parties an opportunity to present argument based on the possible interpretations to be adopted by the local government on remand. *Friends of the Metolius v. Jefferson County*, 28 Or LUBA 591 (1995).

25.11 Local Government Procedures – Action After Remand. Where petitioners never had an opportunity to participate in the local process utilized for adopting the decision on remand, petitioners had no opportunity to raise issues during the remand proceedings and,

therefore, are not limited by "raise it or waive it" rules. *Friends of the Metolius v. Jefferson County*, 28 Or LUBA 591 (1995).

25.11 Local Government Procedures – Action After Remand. Where a local government is required to adopt a new decision on remand, it must conduct a hearing and provide notice of that hearing, at least for the purpose of allowing argument on the proposal's compliance with the standards to be addressed on remand. *Collins v. Klamath County*, 28 Or LUBA 553 (1995).

25.11 Local Government Procedures – Action After Remand. ORS 197.763(8) applies only to a local government's notice of its initial evidentiary hearing. It does not apply to local hearings conducted after remand by LUBA. *Collins v. Klamath County*, 28 Or LUBA 553 (1995).

25.11 Local Government Procedures – Action After Remand. Unresolved issues, which may be considered in a local government proceeding on remand from LUBA, and raised in a subsequent appeal to LUBA from a local decision on remand, include (1) issues presented in the first appeal that LUBA either sustains or does not consider, and (2) issues that could not have been raised in the first LUBA appeal. *Louisiana Pacific v. Umatilla County*, 28 Or LUBA 32 (1994).

25.11 Local Government Procedures – Action After Remand. ORS 197.835(8) applies only where LUBA determines a local government made a land use decision exceeding the local government's discretionary authority under applicable comprehensive plan and land use regulation provisions, not where LUBA determines the local government misconstrued its permissible scope of review on remand from a previous LUBA appeal. *Louisiana Pacific v. Umatilla County*, 28 Or LUBA 32 (1994).

25.11 Local Government Procedures – Action After Remand. Neither law of the case nor issue preclusion applies in a LUBA appeal of a land use decision made after a prior remand by LUBA, where the second appeal involves different parties and a new application for a revised project was submitted after remand. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

25.11 Local Government Procedures – Action After Remand. Where the applicant submits a new application following remand by LUBA of a decision approving an earlier application, a local government is under no obligation to include the record of the prior application or to provide explicit notice that parties have to submit evidence from the previous record that they wish the local government to consider in reviewing the new application. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

25.11 Local Government Procedures – Action After Remand. Where a local government limits its remand proceedings to the issues that were the basis for LUBA's remand, issues that were not raised in the first appeal, and are not within the scope of the issues that were the basis for LUBA's remand, cannot be raised in a subsequent appeal to LUBA. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

25.11 Local Government Procedures – Action After Remand. That newly elected members of the local decision making body decided not to participate in local proceedings on remand from LUBA, because they were not members of the decision making body at the time the original local proceedings were conducted and are unfamiliar with the record, provides no basis for reversal or remand of the local government decision on remand. *Rhine v. City of Portland*, 27 Or LUBA 86 (1994).

25.11 Local Government Procedures – Action After Remand. If a local government wishes to exclude the record of the previous local proceeding on the same development application that led to local proceedings after remand by LUBA, it must expressly do so. Otherwise, in an appeal to LUBA from the local government decision on remand, the record of the previous local proceeding will be considered part of the record of the local government decision on remand. *Murphy Citizens Advisory Comm. v. Josephine County*, 27 Or LUBA 651 (1994).

25.11 Local Government Procedures – Action After Remand. Where LUBA remands a local government decision for an interpretation of ambiguous code provisions, and no appeal is taken from LUBA's determination concerning the code's ambiguity, petitioner is barred from arguing before LUBA that the disputed code provision is unambiguous, in an appeal from the local decision on remand. *McGowan v. City of Eugene*, 26 Or LUBA 9 (1993).

25.11 Local Government Procedures - Action After Remand. Under ORS 197.763, absent consideration of a new development application, local proceedings after remand by LUBA are part of a single, continuous land use process. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458 (1994).

25.11 Local Government Procedures - Action After Remand. ORS 197.763(6), concerning requests by participants to leave the local evidentiary record open, applies only to the "initial evidentiary hearing" and not to local proceedings after remand by LUBA. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458 (1994).

25.11 Local Government Procedures - Action After Remand. It is unclear whether the provisions of ORS 197.763(4) entitling parties to a continuance of a local government quasi-judicial land use hearing if additional evidence is provided in support of the application, applies to local remand proceedings. Nevertheless, to trigger the requirement of ORS 197.763(4) to continue the hearing, a party must request a continuance. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458 (1994).

25.11 Local Government Procedures – Action After Remand. LUBA will not deny a request for voluntary remand of a challenged land use decision, simply because different approval criteria may apply on remand. Petitioners are entitled to obtain review by LUBA to assure a correct decision is rendered, whatever approval criteria may be applicable. *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LUBA 558 (1993).

25.11 Local Government Procedures – Action After Remand. There is no general legal requirement that petitioners be provided an opportunity to rebut proposed local government findings. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

25.11 Local Government Procedures – Action After Remand. Where LUBA briefs are submitted to a local government during the local proceedings on remand, those briefs do not constitute "new evidence" that petitioners are entitled to rebut during the local proceedings on remand. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

25.11 Local Government Procedures – Action After Remand. Where petitioners argue a city cannot approve an amendment to a PUD development plan on remand from LUBA, because the underlying development plan approval expired *after* LUBA remanded the initial city decision approving the amendment, petitioners did not waive this issue. The issue was not ripe to be raised at the time of the city's initial proceedings on the amendment or during petitioners' first appeal to LUBA. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

25.11 Local Government Procedures – Action After Remand. Where a local government fails to apply, or improperly applies, an applicable approval standard in its initial proceedings, it is not automatically required to repeat on remand from LUBA every procedural step it followed in making its original decision. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

25.11 Local Government Procedures – Action After Remand. Local government proceedings conducted after LUBA remand of the initial local government decision, regarding the same application, are a continuation of the initial local government proceedings. Where a petitioner submitted testimony to the local government at some point during the local proceedings, petitioner "appeared before the local government," as required by ORS 197.830(2)(b). *DLCD v. Klamath County*, 25 Or LUBA 355 (1993).

25.11 Local Government Procedures – Action After Remand. In most circumstances, and in the absence of a local code requirement to the contrary, during proceedings on remand a local government need not repeat the entire process it followed in making the original decision. *Schatz v. City of Jacksonville*, 25 Or LUBA 327 (1993).

25.11 Local Government Procedures – Action After Remand. Where (1) the local government's plan and land use regulations were unacknowledged when the original development application was submitted, (2) there has been no proceeding in which the local government identified the applicable standards after limited acknowledgment and enforcement orders were issued by LCDC, and (3) a prior LUBA opinion specifically required the local government to identify the applicable standards, the requirements of ORS 197.763 must be applied to the local proceedings on remand. *Schatz v. City of Jacksonville*, 25 Or LUBA 327 (1993).

25.11 Local Government Procedures – Action After Remand. A local government is required to provide parties with an opportunity to rebut evidence submitted during local

proceedings on remand from this Board under either ORS 197.763(4)(b) or *Fasano*. A local government's failure to provide petitioner with such opportunity is a procedural error that prejudices petitioner's substantial rights. *Caine v. Tillamook County*, 25 Or LUBA 209 (1993).

25.11 Local Government Procedures – Action After Remand. A local government's failure to comply with procedural requirements of ORS 197.763 on remand from LUBA does not allow a petitioner to raise issues in a second appeal to LUBA that are otherwise barred by the doctrine of waiver articulated in *Mill Creek Glen Protection Assoc. v. Umatilla County*, 88 Or App 522, 527, 746 P2d 728 (1987). *Caine v. Tillamook County*, 25 Or LUBA 209 (1993).

25.11 Local Government Procedures – Action After Remand. Where LUBA remands a decision on the basis that the local government failed to identify applicable standards, and ORS 197.763 is applicable to the local proceedings, the local government is required to provide notice identifying the relevant standards, conduct an evidentiary hearing, and allow petitioner to present evidence and argument concerning the applicability and proper interpretation of the identified standards. *Warren v. City of Aurora*, 25 Or LUBA 11 (1993).

25.11 Local Government Procedures – Action After Remand. Reversal of a local government land use decision approving a permit application means the subject application cannot be approved under the applicable criteria as a matter of law, and that a new or amended permit application is required to correct at least one allegation of error sustained in LUBA's final opinion. *Seitz v. City of Ashland*, 24 Or LUBA 311 (1992).

25.11 Local Government Procedures – Action After Remand. While ORS 227.178(3) identifies the criteria that a city must apply to a permit application, it has *no* bearing on whether the city *must*, following reversal or remand of a permit decision by this Board, (1) accept an amended application reviewable against the criteria in effect when the original application was submitted, or (2) require a new application reviewable against the criteria in effect when the new application is submitted. *Seitz v. City of Ashland*, 24 Or LUBA 311 (1992).

25.11 Local Government Procedures – Action After Remand. Following LUBA reversal of a city decision approving a permit application, the choice between whether to allow the permit application to be amended or to require that a new permit application be submitted is within the city's discretion, provided any local code requirements governing that choice are followed. *Seitz v. City of Ashland*, 24 Or LUBA 311 (1992).

25.11 Local Government Procedures – Action After Remand. When a local government decision has been remanded by LUBA, it is within the local government's authority to conduct further proceedings, including holding public hearings and accepting new evidence, to determine whether the subject application complies with the approval criteria that provided the bases for remand. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

25.11 Local Government Procedures – Action After Remand. On remand from LUBA, referral of modifications in proposed plan amendments to the planning commission for its recommendation is not required, where applicable statutory and code provisions requiring planning commission recommendations on proposed plan amendments do not also require that subsequent modifications made during city council consideration be referred to the planning commission for recommendations. *Davenport v. City of Tigard*, 23 Or LUBA 565 (1992).

25.11 Local Government Procedures – Action After Remand. Where a decision approving a permit application is remanded by LUBA, and the application is thereafter modified to correct the deficiencies identified in LUBA's remand, without changing the nature of the original proposal, the local government does not err by applying on remand approval standards as they existed when the permit application was first submitted. Approval standards, as amended following submittal of the original permit application, need not be applied in such circumstances. ORS 227.178(3). *Wentland v. City of Portland*, 23 Or LUBA 321 (1992).

25.11 Local Government Procedures – Action After Remand. Where a permit application is modified following LUBA's remand of a decision granting approval of the permit, but the modified application does not differ significantly from the original application, the local government does not err by failing to require that a new application be submitted. *Wentland v. City of Portland*, 23 Or LUBA 321 (1992).

25.11 Local Government Procedures – Action After Remand. Following remand of a permit decision by LUBA, a local government does not commit error by conducting a public hearing before the governing body, rather than before the hearings officer, as required under the code for the initial permit decision. Absent code requirements to the contrary, local procedural requirements that apply in reaching an initial decision on a permit application need not be followed during local proceedings following remand unless the remand specifically requires that those procedures be followed. *Wentland v. City of Portland*, 23 Or LUBA 321 (1992).

25.11 Local Government Procedures – Action After Remand. Petitioners' allegation that the local government failed to provide required notice of local proceedings following LUBA's remand of a land use decision provides no basis for remand, where petitioners do not contend they were in any way prejudiced by the alleged failure to provide the required notice of the local proceedings. *Wentland v. City of Portland*, 23 Or LUBA 321 (1992).

25.11 Local Government Procedures – Action After Remand. LUBA will not assume certain city council members' participation in a decision following remand from LUBA is improper, simply because those members abstained from participating in the first decision because they felt they were not sufficiently familiar with the record. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

25.11 Local Government Procedures – Action After Remand. Even if a local government erred by failing to provide notice of local hearings following remand from LUBA to persons other than parties in the LUBA appeal, that failure results in no prejudice to the substantial rights of the parties who did receive notice of the local hearings on remand. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

25.11 Local Government Procedures – Action After Remand. A local government may limit its proceedings on remand from LUBA to correcting the deficiencies that led to the remand and, unless the local code so requires, need not repeat the entire process it followed in making the initial decision. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

25.11 Local Government Procedures – Action After Remand. Where the applicable code provisions do not require a local government to conduct an evidentiary hearing after remand, the local government did not err simply because it refused to accept new evidence at a remand hearing. *Washington Co. Farm Bureau v. Washington County*, 22 Or LUBA 540 (1992).

25.11 Local Government Procedures – Action After Remand. Where a decision is remanded because LUBA could not determine what standards were applied to deny a permit application, the local government on remand is required to identify the relevant standards and hold an evidentiary hearing to allow petitioner to present evidence and argument concerning the proper interpretation and application of those standards to his application. *Bradbury v. City of Independence*, 22 Or LUBA 783 (1991).

25.11 Local Government Procedures – Action After Remand. The "law of the case" or "waiver" doctrine does not limit a local government's ability to adopt a different decision, or different findings in support of its decision, after its initial decision is remanded by LUBA. *Eckis v. Linn County*, 22 Or LUBA 27 (1991).

25.11 Local Government Procedures – Action After Remand. City councilors who participated in a decision remanded by LUBA are not bound on remand to vote as they did previously. *Strawn v. City of Albany*, 21 Or LUBA 172 (1991).

25.11 Local Government Procedures – Action After Remand. Where LUBA remands a decision in part on the basis that the local government improperly shifted the burden of proof to those opposed to the subject development proposal, the local government cannot limit its consideration on remand to only the specific issues which provided the other bases for LUBA's remand. *Beck v. City of Tillamook*, 20 Or LUBA 178 (1990).

25.11 Local Government Procedures – Action After Remand. On remand from LUBA, a local government is entitled to limit its consideration of a request for land use approval to the issues that were the basis for remand. *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990).

25.11 Local Government Procedures – Action After Remand. Where a local government decision concerning a permit is remanded by LUBA and, following local proceedings on remand, a second decision concerning the permit is appealed to LUBA, the record supporting the prior decision is not included in the record of the second decision where the county fails to either include the prior record in the second record submitted to LUBA or designate the prior record as being part of the record. *Clark v. Jackson County*, 19 Or LUBA 220 (1990).