28.1 LUBA Scope of Review – Generally. Where a decision that rezoned property specifically authorized development of the rezoned property in advance of adoption of a concept plan for the area, in an appeal of a subsequent decision approving development of the property, LUBA's scope of review does not permit review of an argument that the concept plan must be adopted before development may be approved for the rezoned property. Raising a legal issue in the development approval decision that was resolved in the rezoning decision constitutes an improper collateral attack on the rezoning decision. *Graser-Lindsey v. City of Oregon City*, 72 Or LUBA 25 (2015).

28.1 LUBA Scope of Review – Generally. LUBA's scope of review under ORS 197.835(9) includes authority to determine whether the decision on review "[i]mproperly construed the applicable law[.]" Where LUBA has jurisdiction to review a land use decision, it also has jurisdiction to review challenges to that decision's construction of "applicable law," even if that "applicable law" is not a statewide planning goal, a comprehensive plan provision or a land use regulation. *Carlsen v. City of Portland*, 39 Or LUBA 93, 98-100, *aff'd in part, remanded in part on other grounds*, 169 Or App 1, 8 P3d 234 (2000). *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

28.1 LUBA Scope of Review – Generally. While local laws that do not qualify as land use laws might be so unrelated to land use laws that LUBA's scope of review to consider violations of "applicable law" would not include such laws, a city's business licensing regulations qualify as "applicable law" under ORS 197.835(9)(a)(D), where those business licensing regulations are intertwined with the land use issues in a LUBA appeal. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

28.1 LUBA Scope of Review – Generally. Where a petitioner ignores 13 pages of findings in the local government's final decision that attempt to address the issues the petitioner raised on local appeal, and instead challenges only the findings in the underlying decision that was affirmed by the local government's final decision, the petition for review provides no basis to reverse or remand the local government's final decision. *Dion v. Baker County*, 72 Or LUBA 307 (2015).

28.1 LUBA Scope of Review – Generally. LUBA does not distinguish between parties who are represented by lawyers and parties that appear on their own behalf, in determining whether the party took the required steps to preserve its right at LUBA to assign procedural error. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

28.1 LUBA Scope of Review – Generally. LUBA may consider a challenge that a decision approving a conditional use permit is inconsistent with a resolution that bars extension of sewer outside a sewer district, even if the resolution is not itself a land use regulation, where the resolution qualifies as "applicable law," and is therefore within LUBA's scope of review. ORS 197.835(9)(a)(D). *Pennock v. City of Bandon*, 72 Or LUBA 379 (2015).

28.1 LUBA Scope of Review – Generally. Where a city ordinance adopts a new zoning district but does not apply the zoning district to any property, arguments challenging possible impacts of applying the new zoning district are premature, and such arguments must await a city decision that actually applies the new zoning district to some property in the city. *Oregonians in Action v. City of Lincoln City*, 71 Or LUBA 234 (2015).

28.1 LUBA Scope of Review – Generally. An assignment of error that challenges a local government's modification of a condition of approval imposed in a prior decision, on the basis that the original condition of approval proposed dredging or filling that would trigger application of a comprehensive plan policy, is an impermissible collateral attack on the prior decision and provides no basis for reversal or remand. *McCaffree v. Coos County*, 70 Or LUBA 15 (2014).

28.1 LUBA Scope of Review – Generally. LUBA will not entertain arguments based on equitable estoppel unless the proponent first provides a sufficient basis to conclude that the legislature granted LUBA the authority to reverse or remand a land use decision based on equitable doctrines. *Macfarlane v. Clackamas County*, 70 Or LUBA 126 (2014).

28.1 LUBA Scope of Review – Generally. In an appeal of a decision modifying a permit approval, a petitioner's arguments that prior unappealed decisions extending that permit approval were wrongly decided are viewed as collateral attacks on decisions that were not before the local government in processing the modification, and are not before LUBA on appeal of that modification decision. *McLaughlin v. Douglas County*, 70 Or LUBA 314 (2014).

28.1 LUBA Scope of Review – Generally. Even if prior permit extension decisions are not land use decisions that could have been appealed to LUBA, they are nonetheless final decisions to extend the permit, not intermediate or interlocutory decisions that can be challenged in an appeal of a subsequent decision modifying the permit. *McLaughlin v. Douglas County*, 70 Or LUBA 314 (2014).

28.1 LUBA Scope of Review – Generally. In considering whether the proposed modifications to a previously approved conditional use comply with conditional use approval criteria, if legal issues raised in the modification proceedings are relevant issues regarding approval standards that could not have been raised when the original proposal was approved, the local government is required to address those issues. Conversely, if the arguably relevant issues raised in the modification proceedings could have been fully raised when the original proposal was approved, those legal issues are not a product of the modification and the local government is not required to consider those issues. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

28.1 LUBA Scope of Review – Generally. Where a previously approved conditional use is being modified to eliminate one part of the previously approved use, and conditions of that previous approval are to be modified or eliminated, where the original condition was imposed solely to ensure the part of the conditional use that is to be eliminated is consistent with relevant approval standards, no explanation is required to eliminate such

conditions of approval. However, where it is not clear whether the original condition of approval was imposed at least in part to ensure that part of the conditional use that is to be retained is consistent with one or more relevant approval standards, and an issue is raised concerning whether the proposed modification or elimination of the condition would cause the modified conditional use to violate one or more applicable approval standards, the local government is obligated to explain why the condition can be eliminated or modified without causing the modified conditional use to no longer comply with relevant approval standards. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

28.1 LUBA Scope of Review – Generally. A hearings officer properly declines to address issues regarding the prior rezoning of the area in which the subject property is located, where the issues are not relevant to any of the approval criteria that apply to the current development review proposal or the variance, which post-date that rezoning decision by several years. *Vesper Park v. Washington County*, 68 Or LUBA 106 (2013).

28.1 LUBA Scope of Review – Generally. LUBA will deny an assignment of error that challenges the county's decision that Goal 5 does not apply to a proposed post-acknowledgement plan amendment to amend the county's map of lands eligible for a destination resort because the county failed to compare the location of "other inventoried Goal 5 resources" to the properties proposed to be included on the map where petitioners do not identify any inventoried Goal 5 resource that proposed plan amendment "would affect" under OAR 660-023-0250(3). *Root v. Klamath County*, 68 Or LUBA 124 (2013).

28.1 LUBA Scope of Review – Generally. LUBA will strike documents attached to the petition for review that are offered as "context" for interpreting an administrative rule adopted in 1990, where the documents are not subject to official notice, long post-date the 1990 administrative rule, and could not provide "context" for interpreting the rule. *Fritch v. Clackamas County*, 68 Or LUBA 184 (2013).

28.1 LUBA Scope of Review – Generally. Where a city adopts a new transportation system plan (TSP) that includes a general alignment for a new regional trail but expressly does not authorize a specific alignment, the TSP cannot be challenged based on the adverse impacts of a specific alignment. However, the TSP can be challenged based on legal challenges to the regional trail that do not depend on a specific alignment. *Terra Hydr Inc. v. City of Tualatin*, 68 Or LUBA 279 (2013).

28.1 LUBA Scope of Review – Generally. Where the decision on appeal is a land use decision, LUBA has jurisdiction under ORS 197.835(9)(a)(D) to review the decision for compliance with "applicable law." "Applicable law" is not limited to land use regulations. *Beaumont-Wilshire Neighbors v. City of Portland*, 68 Or LUBA 393 (2013).

28.1 LUBA Scope of Review – Generally. Whether LUBA should include certain kinds of non-land use laws in reviewing land use decisions is somewhat unsettled. But where LUBA has previously reviewed city decisions for compliance with the city's storm water management manual, LUBA will consider the storm water management manual requirements as "applicable law," and within LUBA's scope of review under ORS

197.835(9)(a)(D). *Beaumont-Wilshire Neighbors v. City of Portland*, 68 Or LUBA 393 (2013).

28.1 LUBA Scope of Review – Generally. OAR 660-033-0140 provides that certain permits on agricultural and forest land are void after two years if the use is not initiated within that time period. Where the county development code includes language that is nearly identical to much of the language in OAR 660-033-0140, it is reasonable to conclude the code was adopted to implement OAR 660-033-0140. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

28.1 LUBA Scope of Review – Generally. Where a county makes it sufficiently clear that it adopted its similarly worded version of OAR 660-033-0140 to apply in all county zones, including those that apply to agricultural and forest lands, the county code version of OAR 660-033-0140 applies in place of OAR 660-033-0140 on agricultural and forest lands after the county code version of OAR 660-033-0140 is acknowledged. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

28.1 LUBA Scope of Review – Generally. Where contract consents to annexation have been executed and recorded and there is nothing on the face of the contract consents that calls their validity into question, LUBA does not have authority under ORS 197.835 to consider the contract consent parties' claims that the contract consents were invalidly coerced or that those contract consents have been unilaterally revoked. Claims that the contract consents are invalid or have been revoked must be pursued in circuit court. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

28.1 LUBA Scope of Review – Generally. If an intervenor-respondent wishes to request that LUBA remand a county decision so that the county can apply a different statute than the one the county applied in the appealed decision, that request is not properly presented to LUBA where the intervenor-respondent neither filed a cross petition for review nor raised the issue in a cross assignment of error in the intervenor-respondent's response brief. *WKN Chopin LLC v. Umatilla County*, 66 Or LUBA 1 (2012).

28.1 LUBA Scope of Review – Generally. 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).

28.1 LUBA Scope of Review – Generally. LUBA has statutory authority only to dismiss, affirm, reverse or remand a land use decision, and probably lacks statutory or inherent authority to "vacate" a previously issued final opinion and order on remand from the Court of Appeals, based solely upon the parties' stipulation. *Conte v. City of Eugene*, 66 Or LUBA 479 (2012).

28.1 LUBA Scope of Review – Generally. Where on remand from the Court of Appeals the parties stipulate to "vacate" LUBA's original final opinion and order and "reinstate" the underlying local government decision, the parties' intent can be given effect consistent with LUBA's dispositional authority by issuing a final opinion and order that either dismisses the appeal or affirms the local government decision. *Conte v. City of Eugene*, 66 Or LUBA 479 (2012).

28.1 LUBA Scope of Review – Generally. LUBA only has authority to affirm, remand or reverse land use decisions and does not have authority to grant injunctive or mandatory relief. LUBA will deny assignments of error where LUBA lacks authority to grant the relief that is requested under those assignments of error. *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

28.1 LUBA Scope of Review – Generally. It is the local government that determines—either explicitly or implicitly—whether the party with the burden of proof has carried his or her burden of proof. A local government decision must conclude that the governing criteria are satisfied—presumably because the party with the burden of proof carried his or her burden. Once that decision is made, it is subject to LUBA review to determine whether the local government's decision is supported by substantial evidence. *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

28.1 LUBA Scope of Review – Generally. Where a disputed reply brief, a motion to strike and a motion to take evidence all revolve around an issue that is beyond LUBA's scope of review and has no bearing on a basis for reversal or remand of the challenged decision, LUBA will summarily deny the reply brief and motions. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

28.1 LUBA Scope of Review – Generally. A petitioner's argument that a yet-to-be-developed voluntary, educational septic system maintenance program will not improve upon the city's existing mandatory, regulatory septic system maintenance program is premature. It would be improper for LUBA to speculate about what that voluntary, educational program would look like before the new program is developed and adopted. *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 358 (2012).

28.1 LUBA Scope of Review – Generally. The validity of a conservation easement acquired by the city from the applicant's predecessor-in-interest as a condition of partition approval cannot be challenged in the context of a subsequent decision that relies on the easement to deny an application for development within the easement. *Bundy v. City of West Linn*, 63 Or LUBA 113 (2011).

28.1 LUBA Scope of Review – Generally. When an issue has been decided in a prior proceeding, the prior decision on that issue may preclude relitigation of the issue in a subsequent proceeding if the five requirements set out at *Nelson v. Emerald People's Utility Dist.*, 318 Or 99, 103, 104, 862 P2d 1293 (1993) are met. Those requirements are: (1) the issue in the two proceedings is identical; (2) the issue was actually litigated and was essential to a final decision on the merits in the prior proceeding; (3) the party sought

to be precluded had a full and fair opportunity to be heard on that issue; (4) the party sought to be precluded was a party or was in privity with a party to the prior proceeding; and (5) the prior proceeding was the type of proceeding to which preclusive effect will be given. *Green v. Douglas County*, 63 Or LUBA 200 (2011).

28.1 LUBA Scope of Review – Generally. In two decisions LUBA has concluded that issue preclusion does not apply in the land use context, based on the fifth factor in *Nelson v. Emerald People's Utility Dist.* However, the Court of Appeals reserved its opinion on that issue in *Lawrence v. Clackamas County*, 180 Or App 495, 504, 43 P3d 1192 (2002). *Green v. Douglas County*, 63 Or LUBA 200 (2011).

28.1 LUBA Scope of Review – Generally. Because only one sustainable basis for denying a permit application is required, LUBA need not address additional assignments of error after sustaining one basis for denial. Where additional assignments of error are relatively straightforward and can be resolved within the statutory deadline for issuing LUBA's decision, LUBA may resolve those additional assignments of error where they would provide additional independent bases for sustaining the decision. However, where those additional assignments of error present close and difficult questions of law, and may require LUBA to consider issues that the parties have not briefed, LUBA will not decide such assignments of error. *Onsite Advertising Services LLC v. Washington County*, 63 Or LUBA 414 (2011).

28.1 LUBA Scope of Review – Generally. LUBA sometimes chooses to reject an issue on the merits rather than on the basis of a waiver challenge, where the merits of the issue are straightforward, quicker to resolve than the waiver challenge, and result in denial of the assignment of error. *Kane v. City of Beaverton*, 63 Or LUBA 522 (2011).

28.1 LUBA Scope of Review – Generally. Where LUBA resolves an issue adversely to a party but remands a land use decision for other reasons that party may not fail to appeal LUBA's decision and then raise that same issue in an appeal of the local government's decision following LUBA's remand. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

28.1 LUBA Scope of Review – Generally. Where a county's decision that land is not suitable for commercial forest use misapplies the test that LUBA determined must be applied in an earlier appeal, but the county also properly applies and adequately explains why the land does not qualify as suitable for commercial forest uses under the correct test, the county's misapplication of the test does not provide a basis for reversal or remand. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

28.1 LUBA Scope of Review – Generally. LUBA normally resolves jurisdictional challenges before considering any other arguments on the merits. However, LUBA will consider those other arguments on the merits where petitioner's "jurisdictional" challenge is really an argument for a limited scope of review of a decision that petitioner concedes is a land use decision, and LUBA's resolution of the arguments on the merits makes it unnecessary to resolve petitioner's scope of review arguments. *Parker Johnstone Wilsonville Honda v. ODOT*, 62 Or LUBA 116 (2010).

28.1 LUBA Scope of Review – Generally. Where an assignment of error and the argument in support of that assignment of error does not specifically mention a transportation system plan policy that requires a public hearing before selecting a roadway alignment, the issue of whether that policy has been violated is adequately stated for LUBA review where the petitioner does include an argument that a public hearing is required and was not provided and in the petition for review cites to pages in the record where another party specifically cites the transportation system plan policy. *Reeves v. City of Wilsonville*, 62 Or LUBA 142 (2010).

28.1 LUBA Scope of Review – Generally. Where an assignment of error challenges a finding that the land use decision maker did not rely on in adopting the decision on appeal, LUBA need not address the assignment of error. However, where the issue presented by that assignment of error is fully briefed, all parties wish LUBA to decide the issue and the issue is sure to arise again, LUBA may address and resolve the issue. *Kuhn v. Deschutes County*, 62 Or LUBA 165 (2010).

28.1 LUBA Scope of Review – Generally. While LUBA has held that a motion to take evidence under OAR 661-010-045 is not necessary to consider affidavits or evidence outside the record for the limited purpose of establishing LUBA's *jurisdiction* over the challenged decision, a motion to take evidence is necessary to consider affidavits offered to establish whether LUBA's *scope of review* includes a particular issue. *Wellet v. Douglas County*, 62 Or LUBA 372 (2010).

28.1 LUBA Scope of Review – Generally. LUBA has jurisdiction over "land use decisions" as defined in ORS 197.015(10)(a). In reviewing land use decisions, LUBA's scope of review extends to issues regarding a decision's compliance with federal law. *Foland v. Jackson County*, 61 Or LUBA 264 (2010).

28.1 LUBA Scope of Review – Generally. LUBA does not have the authority to apply the doctrine of severance to sever unconstitutional provisions from an ordinance and thereby affirm the ordinance on appeal. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

28.1 LUBA Scope of Review – Generally. No statute authorizes LUBA to reconsider a previously issued final opinion. *Boucot v. City of Corvallis*, 61 Or LUBA 459 (2010).

28.1 LUBA Scope of Review – Generally. Arguments that a permit applicant failed to raise any issue concerning a refund of permit fees in his appeal of the permit denial provide no basis for a motion to dismiss. Waiver of issues for failure to raise those issues in a local proceeding or prior LUBA appeals may affect LUBA's scope of review, but such waiver does not affect LUBA's jurisdiction to review a decision that qualifies as a land use decision. *Sperber v. Coos County*, 61 Or LUBA 477 (2010).

28.1 LUBA Scope of Review – Generally. LUBA does not consider arguments that are presented for the first time at oral argument. *Hardesty v. Jackson County*, 58 Or LUBA 162 (2009).

28.1 LUBA Scope of Review – Generally. To give preclusive effect to an earlier unappealed land use decision and thus bar raising issues in a subsequent decision on a related, but separate, permit proceeding, the issue must concern particular development that was proposed, considered and approved in the earlier unappealed decision. Where the earlier decision approved only improvements to the second and third floor of a building, and did not purport to approve the first floor reconstruction that is at issue in the subsequent permit proceeding, on appeal of that subsequent permit to LUBA the petitioner is not precluded from raising issues regarding the first floor reconstruction. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

28.1 LUBA Scope of Review – Generally. Even if a prior conditional use permit implicitly approved reconstruction of the first floor of an existing building used for a nonconforming use, failure to appeal the prior decision would not necessarily preclude petitioner from arguing on appeal of a subsequent building permit to reconstruct the first floor that the building permit requires nonconforming use review, where the first floor plan authorized in the building permit approval proposes expansions and alterations not depicted on the first floor plan submitted as part of the prior conditional use application. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

28.1 LUBA Scope of Review – Generally. Where a petitioner appeals a street vacation decision to LUBA, but does not appeal zone change or site plan review decisions that preceded the street vacation decision, petitioner may not assert legal errors in the decisions that were not appealed as a basis for reversing the decision that was appealed. *Olson v. City of Springfield*, 56 Or LUBA 229 (2008).

28.1 LUBA Scope of Review – Generally. Where a petitioner appeals a street vacation decision that was approved by applying newly adopted street vacation standards, but petitioner does not appeal the ordinance that adopted the new street vacation standards, petitioner may not challenge the legal propriety of amending the street vacation standards. *Olson v. City of Springfield*, 56 Or LUBA 229 (2008).

28.1 LUBA Scope of Review – Generally. LUBA is not bound to accept as true factual assertions in petitioner's affidavit in the record. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

28.1 LUBA Scope of Review – Generally. When no response brief is filed, LUBA will nevertheless address a petitioner's assignments of error on the merits, and summary reversal or remand is not appropriate. *Tennant v. Polk County*, 56 Or LUBA 455 (2008).

28.1 LUBA Scope of Review – Generally. When a decision is appealed to LUBA and withdrawn by the city for reconsideration, and a decision is made on reconsideration, any alleged errors made in the original decision that was withdrawn for reconsideration do

not provide a basis for reversal or remand of the decision on reconsideration. *Bullock v. City of Ashland*, 56 Or LUBA 677 (2008).

28.1 LUBA Scope of Review – Generally. If two resolutions are properly viewed as separate and independent decisions, a petitioner's failure to appeal one of those resolutions would generally be fatal to any challenges to determinations made in the unappealed resolution. However, where the two resolutions are adopted contemporaneously to approve a permit application, the two resolutions purport to resolve different legal issues but only have only minor wording differences and both resolutions are supported by the same findings document, an appeal of either resolution is sufficient to allow petitioners to challenge legal determinations in both resolutions. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

28.1 LUBA Scope of Review – Generally. LUBA will not affirm a local government's decision based on a vested rights theory where the county did not address or adopt that theory in its decision. *Dunn v. Yamhill County*, 55 Or LUBA 206 (2007).

28.1 LUBA Scope of Review – Generally. LUBA has authority to interpret ORS 197.352, or any other statute, as may be necessary in the context of reviewing a land use decision that is subject to LUBA's jurisdiction. *Welch v. Yamhill County*, 55 Or LUBA 697 (2007).

28.1 LUBA Scope of Review – Generally. LUBA's scope of review includes review of a final land use decision and review of any interlocutory decisions that are a necessary part of the final land use decision. *Meadow Neighborhood Assoc. v. Washington County*, 54 Or LUBA 124 (2007).

28.1 LUBA Scope of Review – Generally. In reviewing a challenge to a moratorium, LUBA's scope of review is limited to determining whether the moratorium was adopted in violation of ORS 197.505 to 197.530. *Thunderbird Hotels, LLC v. City of Portland*, 54 Or LUBA 487 (2007).

28.1 LUBA Scope of Review – Generally. LUBA's scope of review is established by statute, and the parties in a LUBA appeal may not expand that scope of review simply by making arguments that exceed LUBA's scope of review, even if no party objects to such arguments. *Thompson v. Umatilla County*, 54 Or LUBA 531 (2007).

28.1 LUBA Scope of Review – Generally. ORS 215.780(2) and ORS 197.835(6) and (7) together limit LUBA's scope of review when considering an appeal of a post-acknowledgement plan amendment to impose reduced minimum lot or parcel sizes in an EFU zone pursuant to ORS 215.780(2) to exclude review for statewide planning goal compliance, where the reduced minimum lot or parcel sizes have already been reviewed for compliance with the statewide planning goals by the Land Conservation and Development Commission under ORS 215.780(2) and found to comply with the statewide planning goals. *Thompson v. Umatilla County*, 54 Or LUBA 531 (2007).

28.1 LUBA Scope of Review – Generally. LUBA's scope of review is not limited to the local government record under ORS 197.835(2)(a) when LUBA is considering whether the decision on appeal is a land use decision that is subject to LUBA review. Making that threshold jurisdictional inquiry does not entail "[r]eview of the decision," within the meaning of ORS 197.835(2)(a). *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

28.1 LUBA Scope of Review – Generally. LUBA is not precluded from reviewing a confidential communication from the city attorney to the city council, where a member of the city council provided a copy of the communication to petitioner and thereby waived the privilege that might otherwise preclude LUBA consideration of the communication. *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

28.1 LUBA Scope of Review - Generally. Where petitioners cite a broadcast tower approval criterion that encourages collocation but refer to their undeveloped argument concerning that criterion as "contextual backdrop," LUBA will consider that argument as contextual backdrop rather than an argument that might justify reversal or remand. *Belluschi v. City of Portland*, 53 Or LUBA 455 (2007).

28.1 LUBA Scope of Review – Generally. Where petitioners are aware of two prior city decisions that extended the effective date of a preliminary public facility improvement agreement and do not appeal those prior decisions, petitioners cannot collaterally attack those decision in an appeal of a subsequent decision that relies on those prior unappealed decisions. *Lockwood v. City of Salem*, 51 Or LUBA 334 (2006).

28.1 LUBA Scope of Review - Generally. LUBA will not consider an intervenor-respondent's argument that petitioner's challenge to a lot depth variance should be rejected because the lot depth variance the city approved was unnecessary under applicable zoning regulations, where the city did not consider that issue below. *Lockwood v. City of Salem*, 51 Or LUBA 334 (2006).

28.1 LUBA Scope of Review - Generally. If the argument included in support of an assignment of error clearly alleges that findings are not supported by substantial evidence, the fact that an assignment of error that challenges the adequacy of the city's findings does not expressly include a substantial evidence challenge does not preclude LUBA review of the substantial evidence arguments that follow that assignment of error. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

28.1 LUBA Scope of Review – Generally. Petitioners must do more than argue that a county erroneously relied on a noise study that assumed that the DEQ standards for existing noise sources apply; petitioners must identify which new noise source standards they believe apply and why. *Lindsey v. Josephine County*, 51 Or LUBA 383 (2006).

28.1 LUBA Scope of Review - Generally. Where the issues of whether a regional sewerage plan was properly adopted and whether its adoption is a land use decision were

not before the circuit court in writ of review proceeding, issue preclusion does not apply and petitioners are not foreclosed from arguing to LUBA that the decision to adopt the plan is a land use decision and that it violates Goal 11 and the Goal 11 administrative rule. *Home Builders Assoc. v. City of Springfield*, 50 Or LUBA 109 (2005).

28.1 LUBA Scope of Review - Generally. In an appeal of a land use decision that applies an acknowledged comprehensive plan policy a petitioner may not challenge the validity of the acknowledged comprehensive plan policy. *Sommer v. Josephine County*, 49 Or LUBA 134 (2005).

28.1 LUBA Scope of Review - Generally. LUBA will not consider an interpretive argument that is presented at oral argument but was not included in the petition for review and was not presented to the local government. *Regen v. Lincoln County*, 49 Or LUBA 386 (2005).

28.1 LUBA Scope of Review – Generally. Arguments that an "island" annexation under ORS 222.750 must be remanded because the record does not include consents necessary to establish the validity of previous annexations that rendered the subject area an "island" are essentially collateral attacks on annexation decisions not before the Board, and therefore do not provide a basis for reversing or remanding the challenged island annexation. *Kane v. City of Beaverton*, 49 Or LUBA (512).

28.1 LUBA Scope of Review – Generally. Arguments that the city erred in proceeding with an annexation election prior to determining whether the proposed annexation complied with applicable land use standards do not provide a basis for reversal or remand of the post-election decision, where the decision to proceed in that order was made in a pre-election decision that was appealed to LUBA but dismissed as untimely. Such arguments are essentially a collateral attack on a decision not before LUBA. *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005).

28.1 LUBA Scope of Review – Generally. LUBA will not review an assignment of error alleging that a county improperly retained part of the petitioner's local appeal fee, where the county's alleged actions in retaining the fee postdate the challenged decision before LUBA and are embodied in a different decision that is not before LUBA. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

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

28.1 LUBA Scope of Review – Generally. An assertion in a local notice of appeal that the planning commission erroneously interpreted the comprehensive plan to require preservation of an overlay zoning on the subject property is sufficient to raise an issue,

under *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), regarding whether the overlay zone had expired. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

28.1 LUBA Scope of Review – Generally. An argument that the assignments of error in the petition for review are directed at decisions not before LUBA is not a basis to dismiss an appeal of a decision otherwise within LUBA's jurisdiction. If that argument is correct, the proper disposition is to reject the assignments of error in the petition for review and affirm the challenged decision, not to dismiss the appeal. Such arguments are more correctly viewed as a scope of review challenge rather than a jurisdictional challenge. *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282 (2004).

28.1 LUBA Scope of Review – Generally. Assignments of error that are in substance a collateral attack on determinations made in an earlier unchallenged decision do not provide a basis to reverse or remand the challenged decision. *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282 (2004).

28.1 LUBA Scope of Review – Generally. Where a city decision must be remanded in any event and resolving an assignment of error would require LUBA to determine whether a disputed city decision "rezoned" property within the meaning of ORS 227.186(9)(b), LUBA will not decide that assignment of error where (1) the statute is ambiguous, (2) LUBA has not interpreted the statute before, (3) the parties provide no legislative history and the statutory deadline for issuing LUBA's opinion has already expired, and (4) the city might provide the notice on remand making the allegation of error moot. *Rhodes v. City of Talent*, 47 Or LUBA 574 (2004).

28.1 LUBA Scope of Review – Generally. Issue preclusion does not apply where the party asserting issue preclusion does not demonstrate that the required elements for issue preclusion are present and it appears that the legal conclusion in the prior land use decision that forms the basis for the party's issue preclusion argument was not essential to the prior land use decision. *DeBoer v. Jackson County*, 46 Or LUBA 24 (2003).

28.1 LUBA Scope of Review – Generally. Where a 2003 permit to construct a parking deck does not purport to allow construction of a dwelling that was the subject of a 2001 permit, petitioners may not challenge the 2001 permit approval for the dwelling in an appeal of the 2003 permit decision. *Shoemaker v. Tillamook County*, 46 Or LUBA 433 (2004).

28.1 LUBA Scope of Review – Generally. Where a notice of intent to appeal identifies a planning department's decision to approve a permit without a hearing as the appealed decision, but does not identify a subsequent hearings officer's decision dismissing a local appeal of that planning department decision, LUBA may not consider assignments of error directed at the hearings officer's decision. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 511 (2003).

28.1 LUBA Scope of Review – Generally. An applicant who threatened a mandamus proceeding below to compel the county to approve its application did not benefit by gaining a time advantage where the county took 1,045 days to render its decision in its initial proceedings and 614 days in its proceedings on remand, and the applicant is therefore not judicially estopped from asserting a position before LUBA that may differ from the position it asserted below in support of the threatened mandamus proceeding. *Rutigliano v. Jackson County*, 42 Or LUBA 565.

28.1 LUBA Scope of Review – Generally. LUBA may review a challenge to findings that an applicable criterion is satisfied even though the findings were made in a planning commission recommendation to the board of county commissioners, where it is clear that the criterion must be satisfied in order to approve an application and the board of county commissioners approves the application. *Doty v. Coos County*, 42 Or LUBA 103.

28.1 LUBA Scope of Review – Generally. LUBA will not review petitioner's interpretational challenges to several alternative interpretations of an approval criterion, where the local government finds, and LUBA affirms, that the criterion is satisfied even if it is interpreted in the manner that petitioner argues it should be interpreted. *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 185 (2001).

28.1 LUBA Scope of Review – Generally. Where a planning director's decision to revoke a previously approved appeal fee waiver and reject petitioner's local appeal was final when rendered, and petitioner did not file a timely appeal with LUBA to challenge that decision, petitioner may not challenge the fee waiver revocation and denial of the local appeal in an appeal of a subsequent planning director letter that merely reiterates the earlier decision. *Babbitt v. City of Portland*, 41 Or LUBA 151 (2001).

28.1 LUBA Scope of Review – Generally. In reviewing a land use decision, LUBA's scope of review does not include matters over which LCDC has acknowledgment review authority under ORS 197.251. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426 (2001).

28.1 LUBA Scope of Review – Generally. Where a transportation plan has been submitted to LCDC for acknowledgment review and LCDC has conducted that review with regard to Goal 12 and the Transportation Planning Rule (TPR), LUBA does not have authority to thereafter review the regional transportation plan for compliance with the TPR. That limit on LUBA's scope of review is not affected by the fact that the TPR was adopted to implement both Goal 12 and the ORS 197.712(2)(e) obligation concerning public facility plans, where the statutory obligation is not shown to impose transportation planning obligations that are different than those imposed by Goal 12. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426 (2001).

28.1 LUBA Scope of Review – Generally. LUBA does not have jurisdiction to review a regional transportation plan to determine whether it is consistent with a regional framework plan consistency requirement, where such consistency is also required by Goal 2 and LCDC has jurisdiction to review the regional framework plan and regional

transportation plan for compliance with Goal 2. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426 (2001).

28.1 LUBA Scope of Review – Generally. A regional framework plan requirement for "findings" that a transportation plan is consistent with the regional framework plan is not within LUBA's scope of review where both plans have been submitted to LCDC for acknowledgment review under ORS 197.251. LCDC's review for plan-to-plan consistency under Goal 2 either includes review of the "findings" requirement or renders it legally irrelevant. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426 (2001).

28.1 LUBA Scope of Review – Generally. Where a city planner expresses an opinion in a transmittal letter, but the city council decision that is transmitted with the letter clearly does not express that opinion, the expression of opinion is not reviewable by LUBA in an appeal of the city council's decision. *Robson v. City of La Grande*, 40 Or LUBA 250 (2001).

28.1 LUBA Scope of Review – Generally. The law of the case doctrine, as articulated in *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), does not preclude a county from relying on newly acquired evidence to address a remanded legal issue. A party is not precluded from updating its evidence on remand, nor is the county precluded from reaching a new or different conclusion based on that evidence. *DLCD v. Klamath County*, 40 Or LUBA 221 (2001).

28.1 LUBA Scope of Review – 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).

28.1 LUBA Scope of Review – Generally. 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).

28.1 LUBA Scope of Review – Generally. A petitioner may not challenge the merits of the underlying decision in an appeal of a local decision maker's determination that there is no local appeal available to challenge that decision. *Robinson v. City of Silverton*, 39 Or LUBA 792 (2001).

28.1 LUBA Scope of Review – Generally. LUBA will dismiss an appeal of a component of a local decision for lack of finality where it is clear that the local government has separated an otherwise unitary land use decision into separate components, and remanded some of those components for further local proceedings. *Besseling v. Douglas County*, 39 Or LUBA 177 (2000).

28.1 LUBA Scope of Review – Generally. LUBA will deny a motion to consider evidence that is not included in the record, where the moving party fails to demonstrate that any of the criteria for granting such a motion under OAR 661-010-0045(1) are met and the evidence the moving party seeks to have included does not render the appeal moot. *Dept. of Transportation v. City of Eugene*, 38 Or LUBA 814 (2000).

28.1 LUBA Scope of Review – Generally. Challenges that are directed at a previously approved preliminary plat for a planned unit development in an appeal of final plat approval are an impermissible collateral attack on the prior decision. *Bauer v. City of Portland*, 38 Or LUBA 715 (2000).

28.1 LUBA Scope of Review – Generally. Interpretations that allow a local government to adopt decisions that violate applicable state statute are not deference under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

28.1 LUBA Scope of Review – Generally. A city's interpretation of a "no adverse effect" standard to permit some adverse impacts on adjacent properties, so long as the impacts do not affect the uses on those properties, is not clearly wrong. *Kane v. City of Beaverton*, 38 Or LUBA 183 (2000).

28.1 LUBA Scope of Review – Generally. A petitioner does not waive any rights to present argument in a subsequent LUBA appeal by failing to appeal a prior LUBA decision and assign error to conclusions in that prior LUBA decision, where the conclusions were *dictum* and would not have provided a basis for appeal. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 37 (2000).

28.1 LUBA Scope of Review – Generally. Petitioner does not waive its right to argue at oral argument that a prior LUBA decision was wrongly decided, notwithstanding that petitioner was aware of the prior decision and did not present argument concerning that decision in its petition for review, where respondent argues in its response brief in response to an assignment of error that the prior LUBA decision is controlling. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 37 (2000).

28.1 LUBA Scope of Review – Generally. In considering whether a farm management plan has been substantially complied with, a county is not required to consider issues that could have been presented in a prior, unappealed decision that authorized a property line adjustment for the two parcels that were the subject of the farm management plan. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

28.1 LUBA Scope of Review – Generally. LUBA has jurisdiction to review a statutory challenge to a plan amendment even though the statutory challenge was not raised in a LUBA appeal when the plan was originally adopted, where the statutory question presented when the plan was first adopted is different from the statutory question presented by the plan amendment decision. *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

28.1 LUBA Scope of Review – Generally. LUBA does not have statutory authority to dismiss an appeal of a land use decision *and* direct that particular actions be taken by the city following such dismissal. *Genstar Land Company Northwest v. City of Sherwood*, 36 Or LUBA 787 (1999).

28.1 LUBA Scope of Review – Generally. Where parties stipulate that LUBA may dismiss an appeal or a petitioner withdraws the notice of intent to appeal, LUBA's decision dismissing the appeal expresses no position on the legal effect of actions that may have been taken or may yet be taken pursuant to an agreement entered into by parties to the appeal. *Genstar Land Company Northwest v. City of Sherwood*, 36 Or LUBA 787 (1999).

28.1 LUBA Scope of Review – Generally. LUBA's dismissal of an appeal at petitioner's request expresses no opinion on the merits of any underlying agreement or any actions taken by the local government that may form the basis for petitioner's decision to request that its appeal be dismissed. *Genstar Land Company Northwest v. City of Sherwood*, 36 Or LUBA 612 (1999).

28.1 LUBA Scope of Review – Generally. The law of the case doctrine does not bar petitioners from raising issues that were resolved or could have been raised in a prior decision approving the challenged land use proposal, where the challenged decision revisits, on a *de novo* basis, certain issues resolved in a prior decision, and the issues raised in the present appeal all pertain to matters that the challenged decision revisited. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

28.1 LUBA Scope of Review – Generally. LUBA will not consider arguments that a city erred in approving a modified PUD Master Plan, where the LUBA appeal challenges a preliminary plat decision that is subject to the previously approved PUD Master Plan and petitioner does not appeal a separate city decision that modifies the PUD Master Plan. *Claus v. City of Sherwood*, 35 Or LUBA 437 (1999).

28.1 LUBA Scope of Review – Generally. Petitioner may not prevail on a LUBA appeal unless his assignments of error are sufficiently developed to allow review and provide some legal basis for remand or reversal. *Schaffer v. City of Turner*, 35 Or LUBA 350 (1998).

28.1 LUBA Scope of Review – Generally. When the only decision appealed is a decision changing the required sequence of PUD phases, and the assignments of error provide no basis for reversing or remanding that decision, the decision will be affirmed. LUBA will reject assignments of error that challenge other related decisions that were not appealed. *Claus v. City of Sherwood*, 35 Or LUBA 120 (1998).

28.1 LUBA Scope of Review – Generally. Where a county gives adequate assurances that it will comprehensively review petitioner's assignments of error, LUBA will grant a motion for voluntary remand and will not assume the motion for voluntary remand is motivated by delay or other improper reasons simply because there has been a lengthy

course of litigation in the matter. *Murphy Citizens Advisory Committee v. Josephine Co.*, 35 Or LUBA 117 (1998).

28.1 LUBA Scope of Review – Generally. LUBA does not evaluate common law rights of access, unless those rights of access are incorporated into a local land use standard. *Applegate Estates v. City of Klamath Falls*, 35 Or LUBA 112 (1998).

28.1 LUBA Scope of Review – Generally. Where the petition for review challenging a post-acknowledgment decision raises an issue concerning the propriety of the city relying on documents that were prepared for a pending periodic review, the issue of whether ORS 197.644(2) and OAR 660-025-0040 deprive LUBA of jurisdiction to review the challenged decision is necessarily presented and may be included in a state agency brief submitted under ORS 197.830(7). *Citizens for Florence v. City of Florence*, 34 Or LUBA 793 (1998).

28.1 LUBA Scope of Review – Generally. Where a local government denies petitioner's local appeal as being not timely filed, LUBA review of that decision is limited to the rejection of the local appeal and does not extend to the merits of the underlying land use decision. *Confederated Tribes v. Jefferson County*, 34 Or LUBA 565 (1998).

28.1 LUBA Scope of Review – Generally. LUBA's jurisdiction is limited to reviewing the land use decision appealed. In reviewing an appealed land use decision, LUBA may not consider whether a code amendment that is applied in the challenged decision was properly adopted, where the decision adopting the code amendment was not appealed. *Femling v. Coos County*, 34 Or LUBA 328 (1998).

28.1 LUBA Scope of Review – Generally. LUBA's scope of review is not precluded or affected when petitioner assigns error to a plan amendment but fails to assign error to a corresponding zone change. Under ORS 197.175(2)(b) and 197.835(7)(b), zoning ordinances must conform to and comply with the local government's comprehensive plan, therefore a remand on the basis of error respecting the plan amendment would necessarily invalidate the corresponding zone change. *Geaney v. Coos County*, 34 Or LUBA 189 (1998).

28.1 LUBA Scope of Review – Generally. LUBA is not required to defer to an interpretation by a hearings officer. Thus, the proper standard of review is not whether the hearings officer's interpretation is contrary to the ordinance's express terms or policy, but rather whether that interpretation is reasonable and correct. *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998).

28.1 LUBA Scope of Review – Generally. Where LUBA cannot tell which of several conceivable interpretations of a local ordinance the city intended, the implied interpretation is not adequate for review. *Bradbury v. City of Bandon*, 33 Or LUBA 664 (1997).

28.1 LUBA Scope of Review – Generally. In determining whether a previous local decision vacated lot lines, LUBA considers only what the record establishes the county did in that previous decision, not what the county should have done. *Koo v. Polk County,* 33 Or LUBA 487 (1997).

28.1 LUBA Scope of Review – Generally. A decision maker's finding that a petitioner has not raised an issue below with sufficient statements and evidence to enable the decision maker to respond does not compel LUBA to reach the same conclusion. . *Arnett v. City of Lake Oswego,* 33 Or LUBA 384 (1997).

28.1 LUBA Scope of Review – Generally. The standard applied under ORS 197.829 to LUBA's review of a city council's interpretation of its charter is whether such interpretation was reasonable and correct. *Western PCS, Inc. v. City of Lake Oswego,* 33 Or LUBA 369 (1997).

28.1 LUBA Scope of Review – Generally. In complying with the city's demand that it file an application for a conditional use permit in order to continue its operation, petitioner accepted the validity of that demand for the purposes of the proceeding on its application, and LUBA therefore cannot review the decision to require a conditional use permit. *Recovery House VI v. City of Eugene,* 33 Or LUBA 327 (1997).

28.1 LUBA Scope of Review – Generally. ORS 197.540 grants LUBA review authority over any moratorium, including any extension of a moratorium under ORS 197.530(2), and LUBA may invalidate any improperly extended moratorium. *Manning v. City of St. Paul,* 33 Or LUBA 193 (1997).

28.1 LUBA Scope of Review – Generally. LUBA's authority to review and invalidate an improperly extended moratorium does not include authority to invalidate the initial adoption of a moratorium, where initial adoption was not appealed to LUBA within 21 days after the initial adoption became final. *Manning v. City of St. Paul,* 33 Or LUBA 193 (1997).

28.1 LUBA Scope of Review – Generally. LUBA cannot employ the rules of statutory construction to interpret plan and code provisions even when it does so only as a means to establish a baseline from which to determine whether a local government interpretation is "clearly wrong" or "beyond a colorable defense." *Downtown Community Assoc. v. City of Portland,* 33 Or LUBA 140 (1997).

28.1 LUBA Scope of Review – Generally. LUBA will defer under ORS 197.829(1) to a local government's interpretation of conditional use permit criteria even when that interpretation is at odds with LUBA's own interpretation of identical statutory criteria governing an application for a nonfarm dwelling. *Ray v. Douglas County,* 32 Or LUBA 388 (1997).

28.1 LUBA Scope of Review – Generally. Where petitioners contend that a condition impermissibly defers compliance with local criteria, but fail to identify the approval

criteria to which the condition relates and fail to provide any argument supporting their position, petitioners' allegation is insufficiently developed for LUBA review. *Just v. Linn County*, 32 Or LUBA 325 (1997).

28.1 LUBA Scope of Review – Generally. Since the rule of deference to a local government's interpretation of its plan and land use regulations, which is codified in ORS 197.829(1), does not apply to our review of local government decisions not made by the governing body, the exceptions to the rule, set forth in ORS 197.829(1)(a)-(d), also do not apply. *ODOT v. Clackamas County*, 32 Or LUBA 118 (1996).

28.1 LUBA Scope of Review – Generally. Comments made by city council members during the course of their deliberations that are not reflected in the county's final written findings are not relevant in determining whether the county complied with ORS 227.173(2). *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

28.1 LUBA Scope of Review – Generally. Only actions undertaken by the city prior to the date of the final decision being appealed are relevant to LUBA's review. Assignments of error that relate to actions undertaken by the city after the date of its final decision will be denied. *Tucker v. City of Adair Village*, 31 Or LUBA 382 (1996).

28.1 LUBA Scope of Review – Generally. LUBA's scope of review is limited by ORS 197.835 to a review of the decision made by the county. LUBA does not have statutory authority to issue advisory opinions. *Brugh v. Coos County*, 31 Or LUBA 158 (1996).

28.1 LUBA Scope of Review – Generally. LUBA usually will not consider arguments made for the first time at oral argument before the Board. *DLCD v. Polk County*, 31 Or LUBA 69 (1996).

28.1 LUBA Scope of Review – Generally. When a county has made detailed findings explaining why a challenged decision is not a land use decision under its local regulations or, alternatively, why the decision is exempt from review under those regulations, and those findings are not clearly wrong, LUBA will defer to the county's interpretation of its own regulations. *Leathers v. Washington County*, 31 Or LUBA 43 (1996).

28.1 LUBA Scope of Review – Generally. Although knowing the applicable standard of review is useful to any party to an appeal to LUBA, a petitioner need not specify the correct standard of review in the petition for review in order to obtain a decision on the merits. *Huntzicker v. Washington County*, 30 Or LUBA 397 (1996).

28.1 LUBA Scope of Review – Generally. While ORS 197.829(2) allows LUBA to interpret local land use regulations in the absence of interpretations by the local government, LUBA need not search the record, or make interpretations or draw conclusions that are not clearly evident. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

28.1 LUBA Scope of Review – Generally. While LUBA need not piece together evidence which could explain a city's conclusion, it must consider evidence identified by intervenor-respondent in its brief that support the city's findings that an applicable standard has been met. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

28.1 LUBA Scope of Review – Generally. When a local governing body determines that policies contained in its comprehensive plan are inapplicable to its decision, LUBA's review is limited to whether the governing body's interpretation of the policies and its subsequent determination of their inapplicability satisfies ORS 197.829(1). *East Lancaster Neigh. Assoc. v. City of Salem*, 30 Or LUBA 147 (1995).

28.1 LUBA Scope of Review – Generally. In an appeal of a decision approving a 100 lot PUD on land zoned R-1 and subject to a Goal 5 designation, LUBA will not review a challenge to the city's earlier decision to zone the site for residential development rather than open space. Petitioners cannot collaterally attack the city's decision by arguing that residential development is inconsistent with the Goal 5 designation. *Friends of Neabeack Hill v. City of Philomath*, 30 Or LUBA 46 (1995).

28.1 LUBA Scope of Review – Generally. Petitioners cannot, in a subsequent proceeding, collaterally attack conditions imposed in an earlier, unappealed, decision. *Wakeman v. Jackson County*, 29 Or LUBA 521 (1995).

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

28.1 LUBA Scope of Review – Generally. Petitioners' contention that the county inappropriately zoned their property at the time the comprehensive plan was adopted is not relevant to petitioners' appeal of the county's denial of a comprehensive plan map amendment and zone change. *Sandgren v. Clackamas County*, 29 Or LUBA 454 (1995).

28.1 LUBA Scope of Review – Generally. Where the city council conducted a separate proceeding on the question of whether off-street parking use of certain property requires a conditional use permit, petitioners participated in that proceeding, and city council minutes indicate a final, appealable decision interpreting the local code in this regard was made, petitioners cannot challenge that decision in their appeal of the city's subsequent decision on an application for site plan approval for such off-street parking. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.1 LUBA Scope of Review – Generally. Because LUBA's review is limited to the record of an appealed decision, LUBA cannot rely on a determination in another case that a proposed golf course is not a commercial use to support a determination, in the case on appeal, that a proposed golf driving range is not a commercial use. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

28.1 LUBA Scope of Review – Generally. LUBA's review of a local government decision applying its code mineral and aggregate resources chapter for compliance with ORS 215.283 does not extend to a review of the code chapter for compliance with ORS 215.283 in respects unrelated to the challenged decision. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

28.1 LUBA Scope of Review – Generally. LUBA does not have the authority to reject an otherwise properly filed appeal on the basis of an equitable defense of laches. *Nehoda v. Coos County*, 29 Or LUBA 251 (1995).

28.1 LUBA Scope of Review – Generally. Unless an evidentiary hearing is granted, LUBA's review is limited to the local record. Therefore, if a motion for evidentiary hearing is not filed, LUBA will not consider discussion in a party's brief or oral argument concerning matters not in the local record. *Nehoda v. Coos County*, 29 Or LUBA 251 (1995).

28.1 LUBA Scope of Review – Generally. The submittal of a land use permit application leads to *one* local review process, including any local appeals, and culminates in *one* final local land use decision appealable to LUBA. Any relevant issues concerning the acceptance, processing and approval or denial of such application may be raised in an appeal to LUBA, subject to the requirements of ORS 197.763(1) and 197.835(2) that such issues have been raised below. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

28.1 LUBA Scope of Review – Generally. Although ORS 197.825(2)(a) requires that local appeals be exhausted, the fact that the local code may limit the scope of review of a local appellate body in considering a local appeal does not similarly limit LUBA's scope of review. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

28.1 LUBA Scope of Review – Generally. Where petitioner appeals a decision by a local governing body not to accept petitioner's appeal of a planning commission decision, LUBA's scope of review is limited to whether the governing body correctly decided not to accept petitioner's local appeal. LUBA will not review the merits of the planning commission decision. *Cummings v. Tillamook County*, 29 Or LUBA 550 (1995).

28.1 LUBA Scope of Review – Generally. LUBA is required to defer to a local governing body's interpretation of any enactment which the governing body of that jurisdiction adopted, regardless of whether the governing body of another jurisdiction also adopted the same enactment. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670 (1995).

28.1 LUBA Scope of Review – Generally. Where the challenged decision was adopted by a decision maker other than the local governing body, and the decision fails to contain an interpretation of relevant code provisions, LUBA may interpret the local code. *Beveled Edge Machines, Inc. v. City of Dallas*, 28 Or LUBA 790 (1995).

28.1 LUBA Scope of Review – Generally. Where the dispute between the parties involves an ethical dispute concerning the application of disciplinary rules of the Oregon State Bar that have no direct bearing on the merits of the decision appealed to LUBA, LUBA will not attempt to resolve such ethical dispute. *Burghardt v. City of Molalla*, 28 Or LUBA 788 (1995).

28.1 LUBA Scope of Review – Generally. In reviewing a decision adopted by a local governing body, LUBA must review the governing body's interpretation of local code provisions and may not interpret the local code in the first instance, unless there is "no possible rational dispute" regarding the correct interpretation. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

28.1 LUBA Scope of Review – Generally. Determining whether an advisory body, which submitted a recommendation to the local decision maker in a land use proceeding, violated provisions of the Public Meetings Law in the manner its meetings were held is beyond LUBA's scope of review. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

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

28.1 LUBA Scope of Review – Generally. Where the challenged decision was made by the hearings officer and petitioners contend a zoning district purpose statement is a mandatory standard applicable to proposed development, LUBA may determine, in the first instance, whether the provision is an approval applicable to the proposal. *Ellison v. Clackamas County*, 28 Or LUBA 521 (1995).

28.1 LUBA Scope of Review – Generally. A respondent or intervenor-respondent who wishes to challenge some aspect of an appealed decision must file either a cross-petition for review or a separate appeal. LUBA will not consider assignments of error included in a respondent's brief. *Spathas v. City of Portland*, 28 Or LUBA 351 (1994).

28.1 LUBA Scope of Review – Generally. A petitioner at LUBA may not raise an argument for the first time at oral argument or in a post-oral argument memorandum. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

28.1 LUBA Scope of Review – Generally. Where petitioner appeals local government decisions issuing a building permit and denying a request for a local appeal of the building permit, and petitioner's notice of intent to appeal is filed more than 21 days after petitioner had actual notice of the building permit decision but within 21 days of the decision that there is no right to a local appeal, the notice of intent to appeal is untimely filed with regard to the building permit decision and the only issue to be resolved in the

LUBA appeal is whether the local government determination that there is no right to a local appeal of the building permit decision is erroneous. *Mills v. City of Yachats*, 28 Or LUBA 736 (1994).

28.1 LUBA Scope of Review – Generally. LUBA is not authorized to remand a challenged decision to a local government for the local government to conduct evidentiary hearings, without first resolving the assignments of error raised by a petitioner. ORS 197.835(9)(a). *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

28.1 LUBA Scope of Review – Generally. Under ORS 197.829, LUBA is required to defer to a local governing body's interpretation of its own enactment, unless that interpretation is contrary to the express words, purpose or policy of the local enactment or to a state statute, statewide planning goal or administrative rule which the local enactment implements. *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994).

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

28.1 LUBA Scope of Review – Generally. A planning director's decision that a development has satisfied the requirements of local ordinances is inadequate for review if it does not identify which provisions of the ordinances it addresses, does not set out the facts relied on, and does not relate the facts to the ordinance provisions addressed. *Hart v. Jefferson County*, 27 Or LUBA 612 (1994).

28.1 LUBA Scope of Review – Generally. In an appeal to LUBA from one local government decision, petitioners may not collaterally attack an earlier, separate local government decision that was not appealed. *Sahagian v. Columbia County*, 27 Or LUBA 341 (1994).

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

28.1 LUBA Scope of Review – Generally. In an appeal of a local government decision granting an adjustment, LUBA's scope of review does not include challenges to the adequacy of rules of procedure for granting adjustments previously adopted by the local government in a separate unappealed decision. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.1 LUBA Scope of Review – Generally. 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).

28.1 LUBA Scope of Review – Generally. Where a party's argument is based solely on a document not in the local record, another party objects to LUBA's consideration of that document, and the party making the argument does not move for an evidentiary hearing pursuant to ORS 197.830(13)(b) or offer any other basis on which LUBA might consider the document, LUBA will reject the argument. *Dorgan v. City of Albany*, 27 Or LUBA 64 (1994).

28.1 LUBA Scope of Review – Generally. Claim and issue preclusion may not be asserted against a petitioner in a LUBA appeal based on a prior circuit court proceeding where the circuit court proceeding ended in a stipulated judgment and where petitioner had no notice of and was not a party to the circuit court proceeding. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

28.1 LUBA Scope of Review – Generally. ORS 197.829(1), (2) and (3) essentially codify the standard of review imposed by *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). ORS 197.829(4) limits or qualifies the *Clark* standard of review in certain circumstances. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

28.1 LUBA Scope of Review – Generally. Except as provided in 197.830(13)(b), LUBA's review is limited to the local government record. A motion to participate as an amicus will be denied where the only reason stated for the request is to present expert testimony and other evidence that is not included in the local government record. *Sanchez v. Clatsop County*, 26 Or LUBA 647 (1994).

28.1 LUBA Scope of Review – Generally. LUBA may not expand its review beyond the evidentiary record submitted by the local government simply because the evidence outside the local government record is relevant. *Waugh v. Coos County*, 26 Or LUBA 300 (1993).

28.1 LUBA Scope of Review – Generally. LUBA's review is limited to what is approved by the challenged decision. LUBA will not review the legal sufficiency of a development permit that the challenged decision does not purport to approve. *Hixson v. Josephine County*, 26 Or LUBA 159 (1993).

28.1 LUBA Scope of Review – Generally. LUBA may not reweigh evidence or substitute its judgment for that of a local government concerning a proposal's compliance with applicable standards. *Hixson v. Josephine County*, 26 Or LUBA 159 (1993).

28.1 LUBA Scope of Review – Generally. LUBA's scope of review is determined by ORS 197.835 and 197.763(1). That local government regulations may allow or require

the local governing body's scope of review to be narrowed during local appeals does not similarly narrow LUBA's scope of review. *Cummings v. Tillamook County*, 26 OR LUBA 139 (1993).

28.1 LUBA Scope of Review – Generally. Where a prior local government land use decision was not appealed, neither the merits of the prior decision nor any errors that allegedly occurred in the proceedings leading to that decision, are before LUBA in an appeal of a subsequent local government land use decision. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

28.1 LUBA Scope of Review – Generally. LUBA will not grant a motion to file an amicus brief where the proposed amicus brief raises only an issue that is not raised in the petition for review. *Friends of Bryant Woods v. City of Lake Oswego*, 26 Or LUBA 594 (1993).

28.1 LUBA Scope of Review – Generally. LUBA reviews the local government's final written order. That the final written order may not accurately reflect oral comments made by the local decision maker during its deliberations provides no basis for reversal or remand of the challenged decision. *Derry v. Douglas County*, 26 Or LUBA 25 (1993).

28.1 LUBA Scope of Review – Generally. It is the practice at LUBA for a party that wishes LUBA to consider a document not in the local record, for one of the purposes listed in ORS 197.830(13)(b) or OAR 661-10-045(1), to attach that document to its brief and explain in its brief why LUBA should consider the document. If another party does not object to LUBA considering the document, the document becomes part of LUBA's record and is considered for the requested purpose. If an objection is made, the party offering the document may file a motion for evidentiary hearing under OAR 661-10-045. *Horizon Construction, Inc. v. City of Newberg*, 25 Or LUBA 656 (1993).

28.1 LUBA Scope of Review – Generally. While a local government has authority to regulate the conduct of local proceedings, including the conduct of local appeals, it may not limit LUBA's review authority in ways not authorized by statute. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

28.1 LUBA Scope of Review – Generally. 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).

28.1 LUBA Scope of Review – Generally. Whether LUBA has authority to reverse a local government decision denying land use approval and order the local government to grant land use approval, based on the doctrine of equitable estoppel, is unclear. *Pesznecker v. City of Portland*, 25 Or LUBA 463 (1993).

28.1 LUBA Scope of Review – Generally. While local governments are free to adopt code provisions governing local proceedings, such local requirements do not limit LUBA's scope of review. *Friends of the Metolius v. Jefferson County*, 25 Or LUBA 411 (1993).

28.1 LUBA Scope of Review – Generally. Where the challenged decision does not approve a plan amendment or zone change, and the local government's plan and land use regulations are acknowledged, the Statewide Planning Goals do not apply directly to the proposal. *Friends of the Metolius v. Jefferson County*, 25 Or LUBA 411 (1993).

28.1 LUBA Scope of Review – Generally. LUBA is not bound by legal precedents established by circuit court decisions in unrelated cases. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

28.1 LUBA Scope of Review – Generally. Where a county failed to interpret ORS 215.213(2)(d)(C) as allowing an aggregate processing facility that conducts part of the processing on-site but completes the process of making aggregate into asphalt or portland cement off-site, and the party wishing to assign the county's interpretive failure as error did not appeal the county's decision to LUBA or file a cross-petition for review, LUBA will not consider the interpretive question. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

28.1 LUBA Scope of Review – Generally. Where an applicant neither files its own appeal of the local governing body's decision granting the requested development approval nor files a cross-petition for review in the LUBA appeal filed by the opponents, the question of whether a local appeal by the opponents should have been dismissed by the governing body is not properly presented to LUBA. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

28.1 LUBA Scope of Review – Generally. Where the planning commission delegated to the city manager authority to grant extensions of PUD overall development plan approval, and neither the planning commission's decision nor the city manager's decision exercising that authority was appealed, LUBA will not consider arguments that the planning commission improperly delegated authority to the city manager in an appeal of a subsequent city decision granting final PUD approval. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

28.1 LUBA Scope of Review – Generally. Where the challenged decision characterizes an alleged nonconforming use as a "reprographics, blueprint and printing business," and petitioner does not challenge that characterization in his petition for review, petitioner may not challenge the characterization for the first time in post oral argument memoranda. *Rhine v. City of Portland*, 24 Or LUBA 557 (1993).

28.1 LUBA Scope of Review – Generally. LUBA does not apply land use decision making approval criteria in the first instance. It is the local government's responsibility to consider the evidentiary record, identify the applicable standards, make the decision in

the first instance and explain the basis for its decision in its findings. *ODOT v. City of Waldport*, 24 Or LUBA 344 (1992).

28.1 LUBA Scope of Review – Generally. In determining the nature and scope of the challenged decision, the language of (1) a prior and related determination, (2) an earlier major partition application pertaining to the subject land, and (3) the challenged decision itself, are instructive. *Woosley v. Marion County*, 24 Or LUBA 231 (1992).

28.1 LUBA Scope of Review – Generally. Where nothing in the caption, findings or decision itself suggests that the challenged decision approves a lot line adjustment, a lot line adjustment was not approved. *Barker v. City of Cannon Beach*, 24 Or LUBA 221 (1992).

28.1 LUBA Scope of Review – Generally. LUBA reviews the final written decision of the local government decision making body, not statements that may have been made during the local proceedings by individual decision makers. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

28.1 LUBA Scope of Review – Generally. Where LUBA remands a local government decision, and the local government makes a new decision after remand, petitioners may not contend in an appeal to LUBA challenging the new local government decision, that the original local government decision should have been *reversed* rather than remanded. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

28.1 LUBA Scope of Review – Generally. LUBA will not address issues which are raised by petitioners for the first time at oral argument, and are not included in the assignments of error and supporting argument required to be set out in the petition for review. OAR 661-10-030(3)(b). *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

28.1 LUBA Scope of Review – Generally. Where the petition for review does not contain assignments of error set forth under separate headings, as required by OAR 661-10-030(3)(d), LUBA will only consider those arguments set forth in the petition for review which are stated clearly enough to afford respondents an opportunity to respond. *Heiller v. Josephine County*, 23 Or LUBA 551 (1992).

28.1 LUBA Scope of Review – Generally. In reviewing local government decisions, LUBA's role as an appellate tribunal is to review the local government's explanation of why it believes its decision satisfies relevant approval standards. LUBA's function is not to identify the relevant approval standards or to interpret relevant code and plan language in the first instance. *Warren v. City of Aurora*, 23 Or LUBA 507 (1992).

28.1 LUBA Scope of Review – Generally. The subject of LUBA's review is the local government's final written decision, not statements made during the proceedings leading to adoption of a challenged land use decision. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

28.1 LUBA Scope of Review – Generally. In order to establish estoppel, petitioners must show (1) the local government made a false representation with knowledge of the facts, (2) petitioner was ignorant of the truth, (3) the local government intended that petitioner act upon the false representation, and (4) petitioner in fact acted upon the false representation. That a local government planner stated his opinion that an application is approvable is not adequate to establish estoppel. *Schoppert v. Clackamas County*, 23 Or LUBA 138 (1992).

28.1 LUBA Scope of Review – Generally. LUBA will consider arguments expressed in the petition for review that are stated clearly enough to afford the other parties an opportunity to respond. *Silani v. Klamath County*, 22 Or LUBA 735 (1992).

28.1 LUBA Scope of Review – Generally. LUBA reviews the decision maker's final written decision, not statements made during the proceedings leading to adoption of the challenged decision. Such statements are preliminary and subject to change in the final decision. *Toth v. Curry County*, 22 Or LUBA 488 (1991).

28.1 LUBA Scope of Review – Generally. That a previously approved zone change included a condition providing that if a conditional use permit for a mobile home park on the subject property is not obtained, the property would revert to its previous zoning, does not make the merits of the previous rezoning decision subject to LUBA's review in an appeal of the local government decision approving the conditional use permit. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

28.1 LUBA Scope of Review – Generally. In reviewing a local government decision concerning a nonconforming use, LUBA may consider a letter which was not submitted to the decision maker during the local proceedings leading to adoption of the *initial* decision, but was submitted to and considered by the decision maker during *reconsideration* proceedings. *Warner v. Clackamas County*, 22 Or LUBA 220 (1991).

28.1 LUBA Scope of Review – Generally. Where findings are inadequate to allow review of a local government's decision, LUBA will remand the decision. *Seger v. City of Portland*, 22 Or LUBA 162 (1991).

28.1 LUBA Scope of Review – Generally. Where a local code requires a determination of compliance with applicable ordinance requirements at the time of subdivision outline plan approval and that the final plat be approved if it is "in substantial conformance with the outline plan," a petitioner may not fail to appeal the decision granting outline plan approval and thereafter, in an appeal of the final plan approval, challenge the subdivision's compliance with plan and code provisions found to be satisfied at the time of outline plan approval. *Sandler v. City of Ashland*, 21 Or LUBA 483 (1991).

28.1 LUBA Scope of Review – Generally. LUBA's rules require that petitioners' assignments of error and argument be in the petition for review. LUBA cannot consider an issue raised by petitioner for the first time at oral argument. *Ward v. City of Lake Oswego*, 21 Or LUBA 470 (1991).

28.1 LUBA Scope of Review – Generally. In reviewing a moratorium decision, LUBA's scope of review is limited to determining whether the moratorium complies with the requirements of ORS 197.505 to 197.530. *Western Pacific Development v. City of Brookings*, 21 Or LUBA 445 (1991).

28.1 LUBA Scope of Review – Generally. The reviewable land use decision in an appeal before LUBA is the local government's final written decision, not what individual parties, staff or members of the decision making body may have stated from time to time during the course of local government proceedings. *Waker Associates, Inc. v. Clackamas County*, 21 Or LUBA 588 (1991).

28.1 LUBA Scope of Review – Generally. The subject of LUBA's review is the final written decision adopted by the local government, not oral comments made by individual local decision makers. *Hale v. City of Beaverton*, 21 Or LUBA 249 (1991).

28.1 LUBA Scope of Review – Generally. In reviewing a local government decision adopting a moratorium, LUBA's scope of review is limited to determining whether the moratorium was adopted in violation of ORS 197.505 to 197.530. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

28.1 LUBA Scope of Review – Generally. Neither a local government's adoption of prior moratoria nor the intent of individual residents testifying in support of the challenged moratorium provides a basis for finding the challenged moratorium was adopted in violation of ORS 197.505 to 197.530. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

28.1 LUBA Scope of Review – Generally. LUBA cannot take official notice of local legislative history. Therefore, because LUBA's review is confined to the record of the local proceeding, LUBA cannot consider local legislative history if it is not in the record. *19th Street Project v. City of The Dalles*, 20 Or LUBA 440 (1991).

28.1 LUBA Scope of Review – Generally. No statutory or rule provisions require a petition for review to conform with requirements for pleadings in circuit court proceedings. If a petition for review does not set out facts and legal argument sufficient to persuade LUBA that there is a basis for reversal or remand of the challenged decision, LUBA simply affirms the decision. *Dolan v. City of Tigard*, 20 Or LUBA 411 (1991).

28.1 LUBA Scope of Review – Generally. LUBA reviews a local government's final written decision. The oral comments of individual members of the local decision making body are not relevant to LUBA's review, and do not provide a basis for reversal or remand of the challenged decision. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

28.1 LUBA Scope of Review – Generally. If petitioners believe the assessor has not properly considered the restrictions the county's timber zone puts on their property, their remedy is with the county board of equalization. Petitioners cannot claim in an appeal to

LUBA that the assessment of their property over the years constituted a "false representation," such that the county is estopped from denying their application for a nonforest dwelling. *Sabin v. Clackamas County*, 20 Or LUBA 23 (1990).

28.1 LUBA Scope of Review – Generally. Under ORS 197.540, which limits LUBA's scope of review in appeals of moratoria, LUBA reviews a moratorium based on the record made during the local proceedings, and invalidates the moratorium if the local government failed to adopt findings, supported by substantial evidence, demonstrating that the relevant standards in ORS 197.520(2) and (3) are satisfied. *Davis v. City of Bandon*, 19 Or LUBA 327 (1990).

28.1 LUBA Scope of Review – Generally. While the ORS 197.520(3) "compelling need" standard for adoption of a moratorium "not based on a shortage of key facilities" is stringent, the proper focus of LUBA's review is on the requirements of the statute, particularly the findings required by ORS 197.520(3)(a) through (e). *Davis v. City of Bandon*, 19 Or LUBA 327 (1990).

28.1 LUBA Scope of Review – Generally. LUBA will consider legislative or administrative history materials, when such materials are necessary to its interpretation of statutes, administrative rules or ordinances, regardless of whether the materials are in the record of the proceedings below. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

28.1 LUBA Scope of Review – Generally. It is within LUBA's authority to take official notice of Department of Land Conservation and Development official publications as "public * * * official acts of the * * * executive * * * department of this state." ORS 40.090(2). *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

28.1 LUBA Scope of Review – Generally. A petitioner may not quote large sections of a local government's comprehensive plan, fail to attack the findings adopted by the local government and expect that LUBA will supply legal argument showing why the quoted plan provisions may be violated. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).

28.1 LUBA Scope of Review – Generally. Where a county previously approved use of 145 acres for a golf course, the county is not bound by *res judicata* or collateral estoppel to approve use of an additional 55 acres for that golf course where the issues, property and parties are not the same. *Douglas v. Multnomah County*, 18 Or LUBA 607 (1990).