1.8 Administrative Law – Burden of Proof. For purposes of designating marginal lands under *former* ORS 197.247 (1991), it is not enough for an applicant to provide a list of the allegedly qualifying lots or parcels; the applicant must provide foundational evidence that the lots or parcels are lawful and that lots or parcels that were in common ownership on July 1, 1983, are not overcounted. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

1.8 Administrative Law – Burden of Proof. Where a local code provision requires that a requested zone change be justified by proof that "[t]he potential impact upon the area resulting from the change has been considered," a finding that "[n]o significant evidence was presented by the Applicant regarding the impact upon the area, and certainly nothing indicating that the impact would be minimal or positive," does not *impermissibly* shift the burden of persuasion to the applicant because the applicant has the ultimate burden of establishing that their application complies with applicable criteria. *Carroll v. City of Malin*, 80 Or LUBA 298 (2019).

1.8 Administrative Law – Burden of Proof. Where an environmental review framework includes an implicit assumption that development meeting certain disturbance thresholds will result in significant detrimental impacts to identified resources, it is the applicant's burden to establish that the development will *not* result in significant detrimental impacts, and arguments that the local government failed to find that the development would result in *significant* detrimental impacts provide no basis for reversal or remand. *Himmelberger v. City of Portland*, 79 Or LUBA 367 (2019).

1.8 Administrative Law – Burden of Proof. When petitioner disputes the findings of a hearings officer, the burden of providing sufficient evidence and showing the law was improperly applied lies with the petitioner. If the petitioner does not show the hearings officer erred, the decision will be affirmed. *Johnson v. City of Portland*, 78 Or LUBA 158 (2018).

1.8 Administrative Law – Burden of Proof. When an opponent provides evidence sufficient to rebut the presumption under ORS 215.130(10)(a) regarding the existence, continuity, nature and extent of the proposed nonconforming use, the applicant has the burden of demonstrating that the use proposed for verification has existed and continued in its current nature and extent from the date the use became nonconforming, or 20 years prior to the date of application, whichever date is applicable. *Morgan v. Jackson County*, 78 Or LUBA 188 (2018).

1.8 Administrative Law – Burden of Proof. LUBA will deny a petitioner's challenges to a county board of commissioners' conclusion that a project application satisfies the county code requirement that "[s]ustained noise" generated from a building in which marijuana is grown "shall not exceed 30 dB(A)," based upon statements made in the applicant's engineers' report where petitioner argues the engineer reports failed to adequately describe the system as built, did not consider site-specific characteristics or address allegations that the odor control systems will generate noise in excess of 30 dB(A), but petitioner failed to point to any evidence in the record that calls into question the engineer's statements that the operation will not produce "sustained" noise that exceeds permissible levels. *King v. Deschutes County*, 77 Or LUBA 339 (2018).

1.8 Administrative Law – Burden of Proof. A hearings officer improperly shifts the burden of proof to opponents of a mine to prove that the source of dust that is alleged to have a "significant

impact" on adjacent farms emanates from a haul road that provides access to the mine, where the findings do not explain why the evidence that was submitted by the mine operator demonstrates that the source of the dust is not the haul road. *Del Rio Vineyards, LLC v. Jackson County*, 73 Or LUBA 301 (2016).

1.8 Administrative Law – Burden of Proof. A hearings officer improperly shifts the burden of proof to opponents of a mine to show that source of dust depicted in photographs of the mining area is from mining activities. It is the applicant's burden of proof to show that either the source of the dust depicted in the photographs is not from the mining activities, or that it can minimize or has minimized the dust from those activities so that the hearings officer can conclude that the mining activities do not significantly contribute to the cumulative dust problem in the protected viewshed. *Del Rio Vineyards, LLC v. Jackson County*, 73 Or LUBA 301 (2016).

1.8 Administrative Law – Burden of Proof. A county errs in discounting the testimony of farmer/opponents that a landfill operation causes significant changes or significant costs to their farm practices, for failure to quantify or specify the degree of impacts. While the county is free to give more weight to testimony that is quantified or more detailed over less quantified or detailed testimony, requiring opponents to quantify or specify the degree of impacts, while not requiring similar quantification or specification from the applicant, who has the burden of proof, effectively shifts the burden of proof to the opponents. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

1.8 Administrative Law – Burden of Proof. A land use regulation that assigns the burden of proof to the permit "applicant" does not require that "only the applicant" carry the burden of proof. Assigning the burden of proof to the applicant does not preclude other parties from presenting evidence and legal positions or preclude the decision maker from relying on such evidence. *Pacificorp v. Deschutes County*, 70 Or LUBA 89 (2014).

1.8 Administrative Law – Burden of Proof. A hearings official's expressions of misgivings about the quality of evidence submitted by an applicant do not mean the hearings officer required the applicant to meet an impermissible "absolute certainty" burden of proof. *Teen Challenge v. Lane County*, 67 Or LUBA 300 (2013).

1.8 Administrative Law – Burden of Proof. 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).

1.8 Administrative Law – Burden of Proof. A local code provision that provides that where a proposal will have significant impacts on an area, the proponent of the proposal may be required to submit more detailed and reliable evidence that the proposal will comply with applicable approval criteria than would otherwise be required in order for the county to approve an application with fewer impacts is consistent with *Fasano v. Washington Co. Comm.*, 264 Or 574, 586, 507

P2d 23 (1973), regarding the burden of proof in a quasi-judicial application for rezoning. *Tidewater Contractors v. Curry County*, 65 Or LUBA 424 (2012).

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

1.8 Administrative Law – Burden of Proof. It is generally the applicant's responsibility to anticipate a range of reasonable interpretations or approaches to demonstrating compliance with an approval standard, even if the approval standard is nonspecific and subjective, and to shape the evidence accordingly. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

1.8 Administrative Law – Burden of Proof. Where a local government finds that there is a lack of evidence that vacant buildable lands inside an urban growth boundary are available for development, the local government impermissibly avoids the burden placed on it by Goal 14 and the applicable administrative rules to demonstrate that additional land is needed inside the urban growth boundary for urban development. *Hildenbrand v. City of Adair Village*, 54 Or LUBA 734 (2007).

1.8 Administrative Law – Burden of Proof. The property owner has the burden of proof to establish that it qualifies for the statutory prohibition against nonconsensual annexation provided by Oregon Laws 1987, chapter 737, section 3. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

1.8 Administrative Law – Burden of Proof. A statement by a county commissioner during deliberations that opponents of the application have not presented proof to substantiate their assertion that the applicant has not complied with a mediated settlement does not demonstrate that the commissioner shifted the burden of proof from the applicant to the opponents, where the context of the statement makes it clear that the commissioner was simply discussing conflicting evidence on the issue. *Ray v. Josephine County*, 51 Or LUBA 443 (2006).

1.8 Administrative Law – Burden of Proof. Expert evidence that an enhanced wetland is very unlikely to attract species that would conflict with operation of an adjoining aggregate mine is substantial evidence to support a finding that the enhanced wetlands will not "adversely impact" the mine, notwithstanding conflicting evidence on that point and the fact that the applicant's expert could not guarantee no adverse impacts. *Cadwell v. Union County*, 48 Or LUBA 500 (2005).

1.8 Administrative Law – Burden of Proof. When an opponent below initiates a revocation hearing regarding a previously issued permit, the local government may place the burden of proof on that opponent rather than the permitee. *Stewart v. Coos County*, 45 Or LUBA 525 (2003).

1.8 Administrative Law – Burden of Proof. OAR 660-023-0180(4) does not change an applicant's evidentiary burden to demonstrate that measures proposed to minimize of the impacts

of mining are reasonable, practical and achievable. *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003).

1.8 Administrative Law – Burden of Proof. Where LUBA and the Court of Appeals have already decided that local ordinance provisions require that an applicant for a lot line adjustment demonstrate that the proposed use of the property after the lot line adjustment is served by adequate public facilities and is compatible with comprehensive plan policies, a city may not interpret those same provisions in such a way as to relieve an applicant of that burden. *Robinson v. City of Silverton*, 44 Or LUBA 308 (2003).

1.8 Administrative Law – Burden of Proof. Provided the record demonstrates that the county recognized that the burden of proof remained with the applicant throughout the local proceedings, and that the county was obliged to review all of the evidence in the record to determine whether the applicant carried that burden, findings that *may* be read to shift the burden of proof to opponents do not provide a basis for reversal or remand. *Friends of Yamhill County v. Yamhill County*, 44 Or LUBA 777 (2003).

1.8 Administrative Law – Burden of Proof. Where a local variance provision imposes on the applicant the burden of establishing the nonexistence of alternatives to the variance, the local government errs in interpreting its code to impose on opponents the burden of establishing the existence, costs and consequences of alternatives. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

1.8 Administrative Law – Burden of Proof. Where LUBA cannot tell if the local government simply weighed conflicting evidence, or instead impermissibly rejected the opponent's evidence for failure to satisfy a nonexistent burden of proof, the local government's error in explicitly shifting the burden of proof to the opponents is not harmless. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

1.8 Administrative Law – Burden of Proof. Isolated statements in a land use decision are not sufficient to demonstrate that the decision maker improperly shifted the burden of proof where, viewed in context, it is clear that the burden of proof was placed on the appropriate party. *Dimone v. City of Hillsboro*, 41 Or LUBA 167 (2001).

1.8 Administrative Law – Burden of Proof. The rebuttable presumption provided by ORS 215.130(10)(a) does not shift the applicant's ultimate burden of proof to demonstrate compliance with all applicable approval criteria. Where a party produces sufficient evidence of the continued existence of a nonconforming use for the prior 10-year period, the statute then shifts the burden of going forward with countering evidence to the county or any party opposing the nonconforming use. When sufficient evidence is produced showing that the nonconforming use was interrupted during some period, the applicant may no longer rely on the presumption with regard to that period of interruption. *Lawrence v. Clackamas County*, 36 Or LUBA 273 (1999).

1.8 Administrative Law – Burden of Proof. An interpretation of a zoning ordinance that shifts the burden of demonstrating compliance with minimum lot size approval standards to opponents of the application is erroneous. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

1.8 Administrative Law – Burden of Proof. Where the applicant bears the burden of demonstrating under a local provision that there is no reason to believe a potential hazard exists on the subject property, the absence of evidence regarding potential hazards on the property does not constitute substantial evidence of compliance with that provision. *Jebousek v. City of Newport*, 36 Or LUBA 124 (1999).

1.8 Administrative Law – Burden of Proof. A permit applicant with the burden of demonstrating compliance with an off-site odor standard may not rely on the lack of odor-based complaints in an earlier code enforcement proceeding to establish compliance with the odor standard, where the record includes testimony about possible off-site odor problems. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

1.8 Administrative Law – Burden of Proof. The applicant retains the burden of proof throughout the local process to demonstrate compliance with all applicable approval criteria. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

1.8 Administrative Law – Burden of Proof. A finding that petitioner did not present evidence showing that an approval criterion was not met does not demonstrate an improper shifting of the burden of proof from the applicant to the petitioner, where the decision maker's findings addressing the criterion also explain why the evidence that was submitted demonstrates that the approval criterion is satisfied. *Hannah v. City of Eugene*, 35 Or LUBA 1 (1998) (1998).

1.8 Administrative Law – Burden of Proof. A decision maker may review certain types of land use permit applications more stringently than others, provided the higher burden of proof is not attributable to bias or some other legally impermissible reason. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

1.8 Administrative Law – Burden of Proof. Under ORS 215.296(1), the applicant bears the burden to demonstrate that the proposed use will force no significant change in accepted farming practices or their cost, and the local government's findings must affirmatively explain why it believes there are no such significant adverse impacts. *Just v. Linn County*, 32 Or LUBA 325 (1997).

1.8 Administrative Law – Burden of Proof. Under ORS 215.296(1), the county may not assume from an absence of information in the record that there are no adverse farm impacts. The burden is on the county to identify and explain why it believes there are no significant adverse impacts and why it believes the cost of accepted farm practices would not be increased. *Brown v. Union County*, 32 Or LUBA 168 (1996).

1.8 Administrative Law – Burden of Proof. The proponent of a nonconforming use carries the burden to demonstrate the use was lawfully established and continued without interruption. *Fraley v. Deschutes County*, 31 Or LUBA 566 (1996).

1.8 Administrative Law – Burden of Proof. While it is the applicants' burden to demonstrate compliance with relevant approval criteria, if a local government determines an approval criterion

is not satisfied, it must adopt findings explaining why it believes the applicants failed to meet this burden. *Neuman v. Benton County*, 29 Or LUBA 172 (1995).

1.8 Administrative Law – Burden of Proof. A local governing body in considering an appeal of a planning commission decision approving a subdivision may not shift the burden of proof from the applicant to the opponents of the subdivision. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

1.8 Administrative Law – Burden of Proof. The protected right to continue a nonconforming use is a right to continue the nature and extent of use that existed at the time the use became nonconforming. The proponents of a nonconforming use have the burden of producing evidence from which a local government can make an adequate determination of the nature and extent of the nonconforming use. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

1.8 Administrative Law – Burden of Proof. The burden of showing an alleged nonconforming use was lawfully established at the time it became nonconforming rests with the proponent. *Spurgin v. Josephine County*, 28 Or LUBA 383 (1994).

1.8 Administrative Law – Burden of Proof. Where the local code requires that a proposed use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding land, the applicant has the burden of identifying the relevant accepted farm and forest practices and producing evidence showing those practices will not be significantly changed or their costs significantly increased. *Lyon v. Linn County*, 28 Or LUBA 402 (1994).

1.8 Administrative Law – Burden of Proof. During the local proceedings, the applicant for development approval bears the burden of proof to establish its application satisfies relevant approval standards. Where the local government shifted that burden to opponents of the development application, the challenged decision must be remanded. *Murphy Citizens Advisory Comm. v. Josephine County*, 28 Or LUBA 274 (1994).

1.8 Administrative Law – Burden of Proof. Where the local code explicitly provides that a tie vote of the decision making body means the appealed decision of a lower level decision maker stands, the general rule that a tie vote of a decision maker amounts to a failure of the applicant to carry the burden of proof does not apply. *Derry v. Douglas County*, 28 Or LUBA 212 (1994).

1.8 Administrative Law – Burden of Proof. A finding stating there is no evidence in the record that a proposed conditional use will cause pollution, which simply describes the contents of the record, does not indicate the local government improperly shifted the burden of proof from the applicant to opponents. *Tucker v. Douglas County*, 28 Or LUBA 134 (1994).

1.8 Administrative Law – Burden of Proof. Even after an initial local government decision is made approving a permit application, and a local appeal is filed, the applicant has the burden of establishing that the proposal satisfies relevant approval standards. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

1.8 Administrative Law – Burden of Proof. A Public Works Department memorandum showing traffic counts, setting out accident history and making a conditional recommendation that a traffic study may be deferred is not sufficient to show the applicant carried its burden as a matter of law with regard to compliance with a code minimal adverse impact standard. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

1.8 Administrative Law – Burden of Proof. LUBA will not conclude a local government improperly shifted the burden of proof to those opposing a permit application, based on isolated statements in the challenged decision, where placing those isolated statements in context shows the burden of proof was not improperly shifted to opponents. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.8 Administrative Law – Burden of Proof. Applicants for approval to divide a 110-acre EFU-zoned parcel into 50- and 60-acre farm parcels fail to carry their burden of proof regarding a code standard requiring that the newly created parcels be of sufficient size to continue existing commercial agricultural enterprises in the area, where the applicants submit evidence concerning agricultural activity only on the property proposed to be divided. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

1.8 Administrative Law – Burden of Proof. More than the mere possibility of compliance with applicable standards is required to grant land use approval. However, it does not follow that the possibility that the additional development allowable under a requested comprehensive plan map amendment will violate an applicable standard is insufficient to provide a basis for denial of the request. It is the applicant's burden to establish compliance with all approval standards. *Ericsson v. Washington County*, 26 Or LUBA 169 (1993).

1.8 Administrative Law – Burden of Proof. Because an applicant for development approval bears the burden of proof in a local government proceeding, if the challenged local government's decision denies petitioner's request for zoning clearance, only one sustainable basis for the decision is required. *McPeek v. Coos County*, 26 Or LUBA 165 (1993).

1.8 Administrative Law – Burden of Proof. Where the challenged local government decision determines the applicant had no burden of proof in the local proceedings, the decision demonstrates the decision maker improperly shifted the burden of proof to the local appellants. *Derry v. Douglas County*, 26 Or LUBA 25 (1993).

1.8 Administrative Law – Burden of Proof. Although a local appellant may have the burden under local code provisions of demonstrating error in a lower local decision maker's decision, the *applicant* for permit approval retains the burden of proof concerning compliance with all applicable approval criteria throughout the local appeals process. *Mohler v. Josephine County*, 26 Or LUBA 1 (1993).

1.8 Administrative Law – Burden of Proof. To establish actual bias or prejudgment on the part of a local decision maker, the petitioner has the burden of showing the decision maker was biased or prejudged the application and did not reach a decision by applying relevant standards based on the evidence and argument presented. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

1.8 Administrative Law – Burden of Proof. It is the applicant's burden to establish compliance with each relevant approval standard. Consequently, where the applicant fails to establish compliance with a single approval standard, a decision denying an application will be affirmed. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

1.8 Administrative Law – Burden of Proof. A local government finding that "there was no reliable evidence of" noncompliance with approval standards, read in context, is an evaluation of the state of the evidentiary record, and not an indication that the local government improperly shifted the burden of proof from the applicant for land use approval to opponents. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

1.8 Administrative Law – Burden of Proof. Although a local government is not required to discuss in its findings the evidence it does *not* rely on to support its decision, doing so may improve its chances of success on appeal to LUBA. LUBA will not read such findings as improperly shifting the burden of proof, where the findings read as a whole show the local government was only trying to demonstrate that it considered all relevant evidence. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

1.8 Administrative Law – Burden of Proof. Where applicants wish to establish the scope of a nonconforming use, they have the burden of producing evidence from which the local decision maker can determine the scope of the nonconforming use. If applicants present nonspecific information, they run the risk that reasonable people, including the local decision maker, will disagree with them concerning the scope of the nonconforming use. *Warner v. Clackamas County*, 25 Or LUBA 82 (1993).

1.8 Administrative Law – Burden of Proof. An allegation that the county planning commission referred to petitioner during the local appeal proceedings as the "applicant," rather than the appellant, does not establish that the local government impermissibly shifted the burden of proof from the applicant to petitioner. *Columbia River Television v. Multnomah County*, 24 Or LUBA 82 (1992).

1.8 Administrative Law – Burden of Proof. Findings which indicate the local1 government believed the applicants submitted sufficient evidence to support a conclusion that the relevant approval standards were met, and that petitioners did not present evidence adequate to undermine that conclusion, reflect a correct understanding of the applicants' burden of proof. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

1.8 Administrative Law – Burden of Proof. Petitioner does not have a burden to establish that the proposed UGB amendment will conflict with the adjoining inventoried Goal 5 resource, rather it is the applicant's burden to establish no conflicts will result from the proposed UGB amendment. *ODOT v. City of Newport*, 23 Or LUBA 408 (1992).

1.8 Administrative Law – Burden of Proof. The applicant for comprehensive plan and zone map amendments has the burden of establishing compliance of the proposed amendments with the applicable approval standards. *Hess v. City of Portland*, 23 Or LUBA 343 (1992).