

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A county may not defer a determination of compliance with applicable approval criteria to a future proceeding that does not allow for public participation merely because the deferred criteria require no interpretation or judgment. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Traffic performance standards in the local government’s transportation system plan (TSP) are not approval criteria applicable to a limited land use decision that were incorporated pursuant to ORS 197.195(1), where the applicable criteria either do not refer to the TSP at all or where they only generally “incorporate[] by reference the city’s public facility master plans, including plans for domestic water, sanitary sewer, storm drainage, parks, and transportation.” *Oster v. City of Silverton*, 79 Or LUBA 447 (2019).

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25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. When considering if a piece of property is “suitable for farm use” within the meaning of OAR 660-033-0020(1)(a)(B), the county must consider the parcel in full; it cannot exclude a portion of the property being constrained from farm use from consideration until it evaluates if a reasonable farmer would put the subject property to farm use and/or grazing using the applicable criteria. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 180 (2018).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. When deciding if a property is “suitable for farm use” the county must consider the adjacent or intermingled properties, and property lines or land ownership are not the sole deciding factors. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 180 (2018).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. When local code sets out independent grounds for granting a variance, and when only one of three rezoning criteria must be met in order to grant a rezoning, and the city adequately demonstrated that one criterion was satisfied, LUBA need not consider arguments relating to the other two criteria. *American Tower Corp v. City of Tualatin*, 78 Or LUBA 350 (2018).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. When the city has a general track for requesting planned unit development (PUD) approval and a clear and objective track for requesting PUD approval, the city is not required to demonstrate that the applicant is able to gain approval for some development on the subject property under its needed housing track. ORS 197.307(6)(a) requires only that the city allow the applicant the “option of proceeding” under the needed housing track, and does not require a guarantee or demonstration

of any kind that development is likely to be approved under the clear and objective approval standards in the needed housing track. *Dreyer v. City of Eugene*, 78 Or LUBA 391 (2018).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Senate Bill (SB) 1051 (2018), section 12 did not require cities to amend their land use regulations to implement SB 1051 by July 1, 2018. SB 1051 itself is silent regarding any requirement, much less a deadline for a city to amend its land use regulations to comply with its provisions. SB 1051, section 12 provides for a delayed “operative date” of July 1, 2018. That delayed operative date provides a grace period before which the provisions of SB 1051 did not apply, and after which, the statute applies directly and cities are required to “allow” accessory dwelling in areas required by the statute. But SB 1051 does not direct cities as to the mechanism by which to allow accessory dwellings. *Home Builders Assoc. v. City of Eugene*, 78 Or LUBA 441 (2018).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

While ORS 197.646(1) requires the city to amend its land use regulations to implement SB 1051 (2018), ORS 197.646(2)(b) requires the Land Conservation and Development Commission (LCDC) to establish by rule the time period within which a local government must amend its code to implement a new land use statute “if the legislation does not specify a time period for compliance[.]” LCDC has not adopted any rules specifying a time period for implementation of SB 1051, and SB 1051 itself does not require cities to adopt amendments to their codes that implement all of the provisions of SB 1051 by July 1, 2018. *Home Builders Assoc. v. City of Eugene*, 78 Or LUBA 441 (2018).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where in evaluating petitioner’s zone verification request pursuant to Eugene Code (EC) 9.2741(2), the city failed to consider the ORS 197.312(5) requirement that all accessory dwellings must be allowed “subject to reasonable local regulations relating to siting and design,” the proper remedy is for LUBA to remand the decision to the city for the city to consider in the first instance whether EC 9.2741(2) is a “reasonable local regulation[] relating to siting and design” pursuant to ORS 197.312(5). *Kamps-Hughes v. City of Eugene*, 78 Or LUBA 457 (2018).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Subsection (1) of ORS 215.427 imposes either a 120-day or a 150-day deadline for a local government to take final action on a permit or zone change application. Subsection (2) of that statute gives a county 30 days to advise permit applicants who submit incomplete applications what is needed to make the application complete, and also sets out the three ways an application may be deemed complete. Subsection (3) of that statute freezes the approval standards, as of the date the application was first submitted, if the application is complete when submitted or rendered complete “within 180 days of the date the application was first submitted.” Subsection (4) of that statute renders the application “void” on the one hundred and eighty-first day after the application was “first * * * submitted,” if the applicant has not by that time complied with one of the submittal requirements set out in that subsection or subsection (2) to make the application complete. *Bora Architects, Inc. v. Tillamook County*, 76 Or LUBA 330 (2017).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. The date a permit application was first submitted is important because new or modified permit criteria

enacted after that date do not apply if the application was complete when submitted or is rendered complete in accordance with ORS 215.427(2). The date a permit application is first submitted is also important because on the one hundred and eighty-first day after it is submitted it becomes void if the applicant has been notified that additional information is needed to make the application complete and the applicant has not taken one of the three steps set out at ORS 215.427(4)(a) through (c). *Bora Architects, Inc. v. Tillamook County*, 76 Or LUBA 330 (2017).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A local government does not violate the “goalpost” rule at ORS 215.427(3)(a) when it applies a 1983 master plan to govern development within the master planned community, consistent with a code provision providing that a master plan stays in effect until repealed, and rejects arguments that the master plan had been impliedly repealed, notwithstanding that the local government had not previously applied the master plan as a source of development standards. *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Code procedures and submittal requirements for a pre-application conference are not “applicable criteria” for purposes of ORS 197.835(4)(a), which allows a petitioner to raise new issues regarding applicable approval criteria that a local government omits from the notice of hearing, and the local government’s failure to list pre-application conference code provisions in the notice of hearing does not allow a petitioner to avoid the raise it or waive it requirements of ORS 197.763(1). *Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A local code provision that prohibits grading or development on portions of a site that exceed 20 percent is “clear enough for an applicant to know what [it] must show during the application process.” *Lee v. City of Portland*, 57 Or App 798, 802, 646 P2d 662 (1982). Nothing in the language of ORS 227.173(1) requires that a *method* of measuring slope must be included in the provision in order to determine whether the 20 percent standard is met. *SE Neighbors Neighborhood Assoc. v. City of Eugene*, 68 Or LUBA 51 (2013).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A permit applicant may not insist that a permit application be reviewed based on the standards and criteria in effect on the date the permit application was submitted, if the application is later changed in a material way. *Zirker v. City of Bend*, 64 Or LUBA 114 (2011).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. After an application for permit approval is denied, ORS 227.178(3) does not preclude the permit applicant from filing a second application for permit approval of the same proposal under amended standards and criteria that are in effect when the second application is filed. *Zirker v. City of Bend*, 64 Or LUBA 114 (2011).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where the challenged decision approves (1) a comprehensive plan amendment adding a site to the county’s Goal 5 inventory of significant sites, and (2) a zone change to allow mining of the site, because the zone change application is consolidated with, and dependent upon, the plan

amendment, the goal-post rule at ORS 215.427(3) does not operate to “freeze” the standards that apply to the zone change to those applicable on the date the application was filed. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. The goal-post rule at ORS 215.427(3)(a) is concerned with preventing local governments from changing the substantive criteria that apply to permit applications after application is filed. That concern is not implicated where the applicant is contemporaneously seeking both (1) permit approval and (2) a zone change, and the only “new” standards being applied to the permit application are the standards under the requested new zone. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 215.416(2) requires counties to provide for a consolidated procedure for processing permit applications and zone or plan changes necessary to authorize the permit. Where permit and zone change applications are subject to different procedures or deadlines or for some other reason the two applications cannot be entirely consolidated, it is consistent with the goal-post rule at ORS 215.427(3)(a) to process the different applications together on the same time-line as much as possible and, if necessary, impose conditions to ensure that permit decisions do not take effect prior to the date accompanying zone changes become final. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Even if local ordinances do not incorporate state Department of Environmental Quality (DEQ) noise control regulations, a local government may not authorize noise levels that violate the DEQ regulations. *Scott v. City of Jacksonville*, 60 Or LUBA 307 (2010).

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

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. If a local government interprets its code to the effect that federal particulate matter standards supply the relevant test for compliance with local approval standards, articulates that interpretation for the first time in its final decision, and denies the application for failure to present evidence of compliance with the federal standards, remand would likely be necessary to give the applicant an opportunity to present evidence addressing the federal standards. However, remand is not warranted where the decision merely discusses federal standards, but ultimately concludes that those standards do not govern. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A street connectivity requirement that development street systems not create “excessive travel lengths” is sufficient to qualify as a standard or criterion, and therefore does not violate the ORS 227.173(1) requirement that permit decisions must “be based on standards and criteria.” *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

When an applicant files a consolidated set of applications for: (1) a comprehensive plan amendment; (2) a zone change that is dependent on that plan map amendment; and (3) a development permit that is dependent on that zone change, the goal post rule at ORS 197.427(3)(a) does not apply to “freeze” in place the standards and criteria that applied to that development permit as of the date the applications were filed. Instead the standards and criteria that apply are those supplied by the new plan and zoning designations. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190 (2009).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

ORS 215.427(3)(a), which is referred to as the fixed goalpost rule, has the legal effect of fixing or freezing the law, as it existed on the date a complete permit application was received. ORS 215.427(3)(a) does not require that the county limit its evidentiary review to the facts as they existed on the date a complete permit application was submitted. *Hegele v. Crook County*, 56 Or LUBA 156 (2008).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

While the probable intent of the “goal-post” statute at ORS 215.427(3)(a) is to prevent local governments from approving or denying a permit based on legislative amendments that post-date the application, the statute is not expressly limited to legislative amendments. The goal-post statute arguably also operates to prevent local governments from approving or denying a permit application based on state or local regulations that were initially waived under Ballot Measure 37 (ORS 197.352) but later become “applicable” when the claimant dies, the property is transferred, and the right to seek development approval free of the waived regulations is lost. *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

The drafters of Ballot Measure 37 (ORS 197.352) limited development or use rights to the claimant, and that limitation is a central feature of the measure. LUBA will not presume that the voters intended that limitation to be avoided by operation of the goal-post statute at ORS 215.427(3)(a), which if given full effect would allow the local government to grant development approvals based on ORS 197.352 waivers to persons who are not the claimant. *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where Ballot Measure 37 (ORS 197.352) and the goal-post statute at ORS 215.427(3)(a) operate together, they come into conflict and cannot both be given full effect. *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

In circumstances where the goal-post statute at ORS 215.427(3)(a) conflicts with Ballot Measure 37 (ORS 197.352), the latter prevails, because ORS 197.352 is the more specific and later-adopted statute. *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 215.427(3) does not preclude the local government’s compliance with OAR 660-041-0030, which requires notice to DLCDC of an application for a permit pursuant to a Ballot Measure 37 waiver, because the rule is not an “approval standard or criteria” applicable to a permit application. *DLCD v. Deschutes County*, 54 Or LUBA 799 (2007).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Although local governments frequently attempt to advise permit applicants regarding the scope and nature of evidence that will be required to demonstrate that a proposal complies with applicable land use approval criteria, it is not the local government’s burden to accurately predict in advance all of the evidence that may ultimately be needed to obtain approval of a land use application. *Gillette v. Lane County*, 52 Or LUBA 1 (2006).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. The fixed goal posts rule in ORS 215.427(3)(a) only applies where the county’s comprehensive plan and land use regulations are acknowledged at the time the permit application is submitted. *Niederhof v. Deschutes County*, 48 Or LUBA 626 (2004).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. When neither the notice, nor the staff report, nor the local government’s public discussion, nor the decision ever mentions the applicable criteria, a local government commits procedural errors that prejudice a petitioner’s substantial rights. *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304 (2004).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. An ordinance that allows an up-or-down vote by the county electorate on permit approval decisions is incompatible with, and therefore preempted by, ORS 215.402, which requires that approval or denial of permit applications be governed by standards and criteria set forth in the county’s code and findings explaining why the proposal complies or fails to comply with those standards. *Sievers v. Hood River County*, 46 Or LUBA 635 (2004).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 227.173(1) requires that permit approval standards must be included in a city’s land use regulations, but that statute does not require that a city adopt standards to guide a permit applicant’s evidentiary presentation. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A city’s failure to identify standards that set out the elements of an easement that must be recorded to satisfy the city’s access requirements does not provide a basis for reversal or remand where those standards are not approval criteria. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Even if ORS 197.522 can be read to apply to a city decision to approve a partition and can be read to limit the types of conditions that may be imposed to “reasonable conditions,” ORS 197.522 does not place a burden on a local government to demonstrate that its conditions are reasonably

necessary to address particular circumstances presented in the proposed partition. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Even if ORS 197.522 is applicable to a decision to approve a minor partition, ORS 197.522 does not require a city to modify its minimum right-of-way requirements to respond to arguments that the right-of-way requirements are excessive in a particular case. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. The fixed goal post rule established by ORS 215.427(3) does not apply to an application for a zone change where (1) that application for a zone change is part of, or submitted contemporaneously with, an application for a comprehensive plan amendment, and (2) the zone change is requested to implement the requested comprehensive plan amendment rather than as a separate request that could be approved independently of the requested comprehensive plan map amendment. *Friends of the Applegate v. Josephine County*, 44 Or LUBA 786 (2003).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 197.685(3) and (4) allow local governments to adopt clear and objective approval criteria for seasonal farmworker housing that do not have the result of discouraging needed seasonal farmworker housing, but do not require local governments to adopt additional approval criteria, and do not make unrelated approval criteria applicable in the absence of legislation incorporating those criteria. *Durig v. Washington County*, 40 Or LUBA 1 (2001).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A city is allowed latitude under ORS 227.173(1) in adopting nonspecific and highly subjective criteria, and in explaining what such criteria require in particular cases. Design review criteria requiring that proposed signs enhance the character of historic districts are not impermissibly vague under ORS 227.173(1), where a reasonable applicant could discern from the criteria and the city's explanation of the district's character why the proposed sign violates the criteria. *Multi-Light Sign Co. v. City of Portland*, 39 Or LUBA 605 (2001).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. LUBA will deny a motion to dismiss based on an argument that the challenged decision is a ministerial decision, where the decision interprets and applies a local land use ordinance adopted to implement a statute and that interpretation requires the exercise of discretion. *Demlow v. City of Hillsboro*, 39 Or LUBA 307 (2001).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A local ordinance that institutes a process to remove property from a Goal 5 historic resources inventory but fails to include a method to determine whether the historic designation was "imposed" on the property, within the meaning of ORS 197.772(3), is inconsistent with that statute. *Demlow v. City of Hillsboro*, 39 Or LUBA 307 (2001).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A local government may not apply only local code provisions to an application to remove property

from a historic resources inventory, where the local code provisions are inconsistent with statutory provisions permitting removal of certain properties from a historic resources inventory. *Demlow v. City of Hillsboro*, 39 Or LUBA 307 (2001).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where a city code provision states that, following approval of a permit application, impacts of the proposal must be mitigated, a requirement that the city manager adopt rules to implement that code mitigation requirement does not violate ORS 227.173(1), which requires that the “standards and criteria” for approval or denial of a land use permit be included in the city’s development ordinances. *Rest-Haven Memorial Park v. City of Eugene*, 39 Or LUBA 282 (2001).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

After a city has approved a permit application, the city may not apply code provisions to require that development occur within a particular time frame when the permit was initially approved without the application of those code provisions, and the city’s past practice did not include the imposition of the development deadlines contained in those code provisions. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 193 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

When a variance approval is based on a specific finding that the proposed use is permitted in the underlying zone, the variance approval establishes a time frame for constructing the proposed use, and when the applicant applies for the building permit within the allotted time, the city is obligated by ORS 227.178(3) to apply the same “standards and criteria” that were applicable at the time the variance application was submitted. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

ORS 227.178(3) implicitly requires that a city apply a consistent set of standards to the discretionary approval of the proposed development of land and the construction of that development in accordance with the discretionary approval. A city may not apply one set of standards to the discretionary approval of a proposed development of land and subsequently apply an amended standard to deny a building permit to construct the development in accordance with the discretionary permit. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

The approval of a “permit” under ORS 227.160(2) and 227.178(3) carries with it the right to obtain the building permits that are necessary to build the approved proposed development of land, provided the applicant seeks and obtains those building permits within the time specified in the permit itself or in accordance with any applicable land use regulations that establish a deadline for seeking and obtaining required building permits. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Even if the decision makers were persuaded to reverse their initial decision by a change in city policy that occurred after the subject application was filed, a local government may reinterpret the meaning of indisputably applicable approval standards. *Anderson v. City of Medford*, 38 Or LUBA 792 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where a permit authorizing residential use of a property is granted without specifically authorizing a dwelling of any particular height, and detailed building plans are submitted 10 months after the residential permit is approved, the city is not obligated to apply the building height limitation that was in effect when the residential permit was approved. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

A city's failure to provide notice that it considered a particular comprehensive plan goal to be an approval criterion is a procedural error, and where that failure denies the applicant an opportunity to present argument and evidence concerning that plan goal, the procedural error prejudices the applicant's substantial rights. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

A code criterion requiring that a proposal be shown to be compatible with the surrounding area and to not have more than a minimal impact on the livability and appropriate development of the surrounding area is not unconstitutionally vague and does not violate the ORS 227.173(1) requirement that permit approval criteria be included in the city's land use regulations. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

A city's decision violates ORS 227.173(1) where the city relies on "factors" or "considerations" that are unconnected to approval standards established in its land use regulations to deny a permit application. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

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

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25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

An argument that a local government failed to provide adequate notice of evidence needed to satisfy applicable criteria will fail where the county's staff report interprets the code to require certain evidence and petitioner in fact provides evidence to show that the criterion, as interpreted, is satisfied. *McKenney v. Deschutes County*, 37 Or LUBA 685 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. To establish a challenge under ORS 227.173(1) or ORS 215.416(8), a petitioner must demonstrate that a standard is so vague that an applicant is unable to determine whether and how approval may be granted. *McKenney v. Deschutes County*, 37 Or LUBA 685 (2000).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 227.178(3) constrains a city’s ability to change existing interpretations regarding the *applicability* of approval criteria during the course of proceedings on an application, but does not constrain a city’s ability to reinterpret the *meaning* of indisputably applicable standards. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 227.178(3) provides that the standards and criteria that are in effect when a subdivision application is submitted govern approval of the subdivision application, but ORS 227.178(3) does not limit a local government’s authority to adopt construction or development standards that apply after the subdivision is approved. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. While petitioners may raise issues concerning compliance with approval criteria that are not identified in the local notice of hearing, petitioners must supply some explanation why they believe a “purpose statement” should be viewed as an approval criterion; petitioners may not simply assume that it is a criterion. *Rouse v. Tillamook County*, 34 Or LUBA 530 (1998).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where preliminary subdivision and PUD approval is not modified, approval of the final subdivision and PUD plans is governed by the standard in effect when the application for preliminary approval was submitted. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), circumscribes a local government’s authority under ORS 215.283(1) with respect to substantive standards, but it does not prescribe the procedure the county must use when considering whether a proposed use is permitted. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A local government’s failure to list a possible zoning restriction in the notice of hearing, as required by ORS 197.763, is harmless error, where the zoning restriction is a basis for imposing conditions rather than an approval standard. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where the notice of hearing contained an error in identifying the zoning map designation being requested, the error provides no basis for reversal or remand where the error had no effect on the approval standards the zone change request was subject to and therefore resulted in no prejudice to petitioner. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 227.178(3) does not prevent a city from adopting an interpretation of a comprehensive plan that is different than the interpretation that was in effect on the date the permit application was submitted, and applying that new interpretation to the permit application. *Holland v. City of Cannon Beach*, 34 Or LUBA 1 (1998).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Under ORS 215.284(3) a partition of EFU-zoned land must leave a remainder parcel that meets the applicable minimum parcel size. *Lyle v. Wheeler County*, 33 Or LUBA 746 (1997).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Under ORS 197.625, when a county code provision has not yet been acknowledged by LCDC, a land use application is subject to that provision, as well as to the applicable land use goal and its implementing rules. *Evans v. Multnomah County*, 33 Or LUBA 555 (1997).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Unless a specific process is followed to eliminate lot lines, under ORS 92.107 lots remain discrete lots. *Koo v. Polk County*, 33 Or LUBA 487 (1997).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Under ORS 215.428(3), petitioner's application is subject to the statutes and rules in effect at the time the application was first submitted. *Sill v. Marion County*, 32 Or LUBA 40 (1996).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 258.036, which governs jurisdiction over election contests, does not apply to the election of members to a county citizen planning advisory committee (CPAC). *Boom v. Columbia County*, 31 Or LUBA 318 (1996).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. To grant approval for a replacement dwelling under ORS 215.283(1)(t), the county need only find that the original dwelling was lawfully established. *Drake v. Polk County*, 30 Or LUBA 199 (1995).

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

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 227.178(3), which requires that approval or denial of a land use application be based upon the standards and criteria that were applicable at the time the application was first submitted, would be frustrated if amendments to state regulations had the effect of changing the criteria affecting an application during the proceedings. *East Lancaster Neigh. Assoc. v. City of Salem*, 30 Or LUBA 147 (1995).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Provision in Transportation Planning Rule (OAR 660-12-055(3)) that requires direct application

of certain provisions after a certain date does not override ORS 227.178(3), which requires that approval or denial of a land use application be based upon the standards and criteria that were in effect at the time the application was first submitted. *East Lancaster Neigh. Assoc. v. City of Salem*, 30 Or LUBA 147 (1995).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 215.428(3), which states that approval or denial of an application shall be based upon the standards and criteria that were applicable at the time the application was first submitted, does not require a local government processing a partition application to proceed as if factual circumstances existing at the time of application remain unchanged. *Petree v. Marion County*, 29 Or LUBA 449 (1995).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A code provision requiring that certain applications for changes to an approved planned development (PD) final development plan “shall be processed in the same manner as for a new PD” must be interpreted consistently with ORS 227.178(3) to mean that any standard which would be applicable to a new application for PD approval is applicable to such applications for changes to approved PDs. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A code definition of “nonconforming use,” together with a code provision that a “nonconforming use may be continued,” embody the standards applicable to determining the existence of a protected nonconforming use sufficiently to satisfy ORS 215.416(8). A county may consider relevant legal principles concerning the existence of nonconforming uses set out in the opinions of LUBA and the Oregon appellate courts, without having to adopt such principles as county regulations. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 197.763(3)(b) and (5)(a) require a local government to provide notice of the standards applicable to an application for a quasi-judicial land use decision, prior to its hearing on such an application. *Laine v. City of Rockaway Beach*. 27 Or LUBA 493 (1994).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A code requirement that a parking structure be “consistent with the City’s short term parking strategy” does not, in itself, satisfy the requirement of ORS 227.173(1) that permit standards and criteria be set forth in development ordinances, because it explains nothing about the basis on which such an application will be approved or denied. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where consistency with the city’s “short term parking strategy” is a code requirement, a city cannot determine its “short term parking strategy” is something that *underlies* various provisions of its plan and code and cannot announce that strategy for the first time in a decision on a permit application. This violates the requirement of ORS 227.173(1) that permit standards and criteria *themselves* must be set out in the city’s development ordinances. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. The meaning of the term “standards and criteria” in ORS 227.178(3) is a question of state law, and a city’s interpretation and application of this term does not bind LUBA. The role of the term “standards and criteria” in ORS 227.178(3) is to assure both proponents and opponents of an application that the substantive factors that are actually applied and that have a meaningful impact on a decision permitting or denying an application will remain constant throughout the proceedings. *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where a city has created a two-stage (tentative plan and final plat) approval process for subdivision applications, under ORS 227.178(3), both subdivision tentative plan and final plat approvals must be based on the “standards and criteria” in effect when the subdivision application is initially filed. *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 215.130(2) allows cities to adopt contingent plan and zoning designations for property to be annexed in the future, but it does not allow cities to grant contingent permits for property to be annexed in the future. *Recht v. City of Newport*, 26 Or LUBA 316 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Unless a county notifies the applicant that its permit application is incomplete, as required by ORS 215.428(2), and the deficiency is not remedied within 180 days, under ORS 215.428(3) the county must apply the standards and criteria in effect when the application was filed. *Cummings v. Tillamook County*, 26 OR LUBA 139 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A local code provision that imposes “compatibility” as a permit approval criterion adequately informs interested parties of the basis on which an application will be approved or denied and, therefore, complies with ORS 215.416(8). *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. The fact that a PUD proposal was altered in 1992 to eliminate a need for story variances, does not retroactively cause the underlying application, submitted in 1990, to be incomplete at the time it was submitted. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where a proposal is changed after the permit application is submitted, ORS 227.178(3) locks in the standards in effect at the time the application was first submitted, so long as the original proposal remains “fundamentally intact” after the change. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where a city’s plan and land use regulations were unacknowledged at the time the subject permit application was initially filed, ORS 227.178(3) does not restrict the applicable standards to those in effect when the application was filed. *Schatz v. City of Jacksonville*, 25 Or LUBA 327 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. While ORS 215.416(9) does not require that findings include citations to, or verbatim quotes of, applicable approval standards, it does require that a reasonable person be able to determine from the local government’s decision what it considered to be the relevant criteria and standards. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where a sign-permitting process involves two steps—obtaining a sign permit and architectural review approval—and each step requires the filing of an application and an application fee, and is subject to different standards which are intended to be applied in addition to the requirements of the other, under ORS 227.178(3) an application for sign permit or architectural review approval is subject to the standards in effect when that particular application is submitted. *A Storage Place v. City of Tualatin*, 25 Or LUBA 202 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Under ORS 215.428(1) to (3), an application for permit approval is considered complete when it is filed, unless the county notifies the permit applicant that information is missing. ORS 215.428(2). *DLCD v. Crook County*, 25 Or LUBA 98 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. LUBA will not assume changes in a PUD proposal between outline development plan approval and preliminary development plan approval constitute a new PUD application (requiring application of then existing approval standards), where there is nothing in the local code to support so characterizing the amended PUD proposal. *DLCD v. Crook County*, 25 Or LUBA 98 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. For purposes of identifying the “standards and criteria” that are “applicable at the time the application was first submitted” under ORS 227.178(3), the *acknowledged* comprehensive plan standards and criteria continue to apply, even after adoption of an ordinance repealing or amending those acknowledged standards and criteria, until the newly adopted plan standards and criteria are themselves deemed acknowledged. *Davenport v. City of Tigard*, 25 Or LUBA 67 (1993).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Under ORS 227.178(3), the quasi-judicial land use decision-making procedures of ORS 197.763 apply to an urban subdivision decision, where the subdivision application was submitted after ORS 197.763 became effective, but before the effective date of legislation exempting limited land use decisions from the requirements of ORS 197.763. *Warren v. City of Aurora*, 25 Or LUBA 11 (1993).

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

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where (1) a standard was deleted from the local comprehensive plan prior to the filing of a permit application, (2) the ordinance deleting the standard was remanded by LUBA while the permit application was pending, but (3) the local government made a second decision to delete the standard and that decision was deemed acknowledged prior to the local government’s final decision on the permit application, the standard does not apply to the permit application. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where a local government advised petitioners of the substance of an applicable requirement, but failed to identify the ordinance that is the source of the requirement, this is a procedural error which does not prejudice petitioners’ substantial rights. *Woosley v. Marion County*, 24 Or LUBA 231 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where a “substantial construction” standard in a local code is clear enough for an applicant to know what he must show during the application process, such a standard is not impermissibly vague. *Columbia River Television v. Multnomah County*, 24 Or LUBA 82 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where a PUD amendment application is a separate and distinct application from the original PUD application previously approved, the standards in effect when the PUD amendment application was first filed apply. ORS 227.178(3). *Gage v. City of Portland*, 24 Or LUBA 47 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Under ORS 227.178(3), so long as additional information required by the city is submitted within 180 days of when a permit application was first submitted, the standards in effect when the application was first submitted apply to the application. *Gage v. City of Portland*, 24 Or LUBA 47 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

The standards in effect at the time a development application is filed are the standards applicable to approval of such development applications. *Veach v. Wasco County*, 23 Or LUBA 515 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Counties may adopt EFU zones that are more restrictive than statutory EFU zoning requirements, but may not adopt EFU zones that are less restrictive than the statutory requirements. *Harris v. Polk County*, 23 Or LUBA 152 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where a city’s comprehensive plan and land use regulations were not acknowledged when a permit application was initially filed, ORS 227.178(3) does not restrict the standards applicable to that application to those in effect when the application was filed. *Schatz v. City of Jacksonville*, 23 Or LUBA 40 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where a local government held further evidentiary hearings on a permit application after issuance of an LCDC enforcement order, and made its final decision approximately four months after the enforcement order was issued, the local government was required to consider and comply with the enforcement order in adopting its decision. *Schatz v. City of Jacksonville*, 23 Or LUBA 40 (1992).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where the height limitation for the underlying zone is a standard applicable to approval of a PUD preliminary development plan, under ORS 227.178(3) the preliminary development plan must comply with the building height limitation in effect when the preliminary development plan application was first submitted. *Gilson v. City of Portland*, 22 Or LUBA 343 (1991).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where the standards upon which conceptual development approval was based are changed to disallow the use conceptually approved, and later decisions authorizing a building permit and final development approval for the use are adopted on the basis the prior standards continue to apply, a petitioner is entitled to challenge the later decisions notwithstanding petitioner's failure to challenge the conceptual development approval. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Nothing in ORS 215.428(3) requires a county to apply standards in effect at the time one development application is submitted to a distinct and subsequent development application. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where a "conceptual approval" decision requires that an applicant file a new application for final development approval, and the challenged decision is made on the basis of that new application, the second development approval request is an "application" as that term is used in ORS 215.428(3) and the code provisions in effect at the time the second development application was submitted are applicable to the second development application. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

Where petitioners contend that under ORS 215.428(3), the county erred by applying standards adopted after their permit application was initially filed, petitioners claim the county "improperly construed the applicable law." ORS 197.835(7)(a)(D). *McCaw Communications, Inc. v. Polk County*, 20 Or LUBA 456 (1991).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria.

If petitioners' letter to the county planning director constituted an "application" for the necessary permit for the proposed facility, the county (1) could not require petitioners to submit a different application after its subsequent adoption of additional standards, and (2) erred in applying the subsequently adopted standards to the initial "application." *McCaw Communications, Inc. v. Polk County*, 20 Or LUBA 456 (1991).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where a letter to the county planning director describes the proposed use and location and clearly requests the county to take action to grant land use approval, and it is at best unclear whether the local code required a conditional use application for such a proposal, petitioners’ letter constitutes an “application” under ORS 215.428(3). *McCaw Communications, Inc. v. Polk County*, 20 Or LUBA 456 (1991).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Under ORS 215.428(3), the county flood standards in effect at the time the “application” was first submitted to the county apply. However, for the purpose of determining which county flood standards must be applied, the dispositive “application” is the one to which county flood standards are applicable. *Komning v. Grant County*, 20 Or LUBA 355 (1990).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Neither ORS 92.044(1) nor 227.173(1) requires that local governments set out the Statewide Planning Goals in their ordinances as approval standards applicable prior to acknowledgment. *Knapp v. City of Jacksonville*, 20 Or LUBA 189 (1990).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. ORS 215.428(3) does not preclude an applicant from submitting a new permit application, similar or identical to a previous permit application found inconsistent with applicable standards, for the purpose of obtaining review under amended approval standards in effect when the new application is filed. *Eckis v. Linn County*, 19 Or LUBA 15 (1990).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. Where permit approval standards are amended, ORS 227.178(3) does not preclude an applicant from submitting a new application, similar or identical to a previous application found inconsistent with the previous approval standards, for the purpose of obtaining review under the amended standards. *Sunburst II Homeowners v. City of West Linn*, 18 Or LUBA 695 (1990).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A “new” application was filed, within the meaning of ORS 227.178(3), where the record includes, in addition to documents filed in support of a prior application, a new application form signed by the applicant’s employee, and the city conducted a full *de novo* review of the new application, after remand by LUBA of its decision on a prior identical application. *Sunburst II Homeowners v. City of West Linn*, 18 Or LUBA 695 (1990).

25.3.2 Local Government Procedures – Compliance with Statutes – Applicable Criteria. A petitioner does not waive its right under ORS 215.428(3) to have its application reviewed under the criteria in effect when the application was first submitted, where petitioner’s statements in the proceedings to amend the criteria do not show petitioner was aware of such rights and petitioner did assert its rights before the planning commission and board of commissioners. *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 651 (1990).