

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where an applicant proposes to vacate an existing right-of-way and construct a replacement, and where approval criteria require that the vacation “not create an access configuration which violates present development standards,” arguments that the proposed replacement (1) is adjacent to a private street which is in noncompliance with development standards requiring curbs and sidewalks, a planter strip with trees, and on-street parking, or (2) connects to an existing sidewalk and crosses an existing driveway which are in noncompliance with development standards regulating their width and the length, provide no basis for reversal or remand because neither the vacation nor the proposed replacement cause or create the noncompliance. Similarly, arguments that the proposed replacement violates development standards regulating fencing and requiring that certain pedestrian connections be identified by more than striping alone provide no basis for reversal or remand because those standards have nothing to do with access configurations. *Neighbors for Smart Growth v. Washington County*, 79 Or LUBA 1 (2019).

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

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

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Petitioners fail to establish that the city erred in concluding that rezoning a property to neighborhood commercial is consistent with Statewide Planning Goal 5 when the rezoning the subject property constitutes a PAPA for purposes of applying Goal 5, which provides that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource by allowing new uses that

“could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list.” The city’s PAPA is a very limited one, that in relevant part simply applies the zones implementing the city’s comprehensive plan designations that the acknowledged comprehensive plan has already designated for the corresponding uses. Because the challenged PAPA simply implements that acknowledged plan designation choice with the exercise of little or no discretion, the PAPA does not authorize any “new uses” for purposes of OAR 660-023-0250(3) and Goal 5. *Renken v. City of Oregon City*, 79 Or LUBA 82 (2019).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where the city code defines “net density” to mean “the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of the residents in the development,” and excludes public and private streets, the city did not err in including in the net density acreage calculation parking drives designed primarily to provide vehicular circulation to parking spaces in the apartment complex for resident and visitor parking and a leasing office and maintenance building. *Hulme v. City of Eugene*, 79 Or LUBA 218 (2019).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where the county planning director processed a similar use determination under the county’s Type II review to determine whether an electrical transmission line is allowed in a particular zone, the board of county commissioners reviewed the director’s similar use determination in a consolidated appeal under a Type III process, and petitioners argue that the county erred by not providing an intermediate decision by a decisionmaker other than the county governing body, that alleged procedural error provides no basis for reversal or remand because that alleged error does not prejudice petitioner’s substantial rights. *Tilla-Bay Farms, Inc. v. Tillamook County*, 79 Or LUBA 235 (2019).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where a county determines an electrical transmission line is a “similar use” authorized in a particular zone pursuant to the county’s “similar use determination” process, which allows a similar use “[w]here a proposed use is not specifically identified by [the code], or [the code] is unclear as to whether the use is allowed in a particular zone,” petitioners’ argument that the county may make a similar use determination only if the proposed use is not specifically identified anywhere in the county’s code is without merit. A similar use determination is not necessary or appropriate where the use is specifically permitted or prohibited in the subject zone. In adopting the similar use determination process, the county contemplated instances where a use is specifically identified as an allowed use in some zones but not specifically identified as an allowed use in the subject zone. *Tilla-Bay Farms, Inc. v. Tillamook County*, 79 Or LUBA 235 (2019).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/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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**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** A hearings officer does not misconstrue a development code requirement that a project applicant must demonstrate that environmental impacts have been “minimized to the extent practicable,” in finding that the project applicant is not required to propose a smaller sized dwelling. *McAndrew v. Washington County*, 78 Or LUBA 21 (2018).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where a county’s development ordinance provides that the county shall not approve a minor partition unless the proposal complies with the county’s zoning ordinance that specifies that minimum parcel size for all new parcels in designated big game habitat “shall be 160 acres or larger if required by the underlying zone,” the zoning ordinance does not provide any exceptions to the minimum parcel size requirement, and there is no dispute that the subject property is located within designated big game habitat, “considerations” such as existence of a farm dwelling, other structures, and intense farm use do not provide a legally sufficient basis for deviating from the minimum parcel size requirement, and such a partition is prohibited as a matter of law. *ODFW v. Lake County*, 78 Or 53 (2018).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** When a hearings officer’s findings are based on substantial evidence that the proposed instream mitigation is likely and reasonably certain to succeed in mitigating any adverse impacts caused by increased summer pumping, the hearings officer did not misconstrue the code requirement that any negative impact on fish resources be completely mitigated so that there is no net loss or net degradation of the resource. *Gould v. Deschutes County*, 78 Or LUBA 118 (2018).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Petitioners did not demonstrate that the county hearings officer erred where local county standards apply to development in “areas designated as floodways [as found on Federal Emergency Management Agency (FEMA) maps] or by methods described” elsewhere in the code, and the county hearings officer determined that because the development was not located within the “floodway,” those standards did not apply. This is so, even where petitioners argue the FEMA maps are inaccurate and another section of code authorizes the county floodplain administrator to determine where the floodway is currently located based on “actual field conditions,” but the county administrator has chosen not to exercise the authority granted in that section. *Meyer v. Jackson County*, 78 Or LUBA 150 (2018).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where the county hearings officer agreed that the

proposed project involved “the alteration of a watercourse” and that therefore standards applied which required the project applicant to show that the development “will not diminish the carrying capacity of a watercourse” by submitting “certification by an Oregon registered professional engineer,” that in the engineer’s opinion the watercourse “will not be diminished,” the applicant has met those requirements by submitting the certification by a licensed engineer, even though another section of the county’s code requires the applicant to “submit technical data” and a “Conditional Letter of Map Revision” from FEMA “when an alteration of a watercourse results in the expansion, relocation or elimination of the special flood hazard area [SFHA]” because the engineer certified that the project has not resulted in the expansion, relocation or elimination of the SFHA. *Meyer v. Jackson County*, 78 Or LUBA 150 (2018).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/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).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** When a city modifies a condition of approval in lieu of citing specific evidence and findings, the decision will be remanded for the city to adopt more adequate findings based on substantial evidence regarding compliance with local code. If the city cannot determine based on substantial evidence in the record that local codes are complied with, and the city chooses to defer that issue to a subsequent proceeding, that subsequent proceeding must provide notice and opportunity for public participation. *Dreyer v. City of Eugene*, 78 Or LUBA 391 (2018).

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

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** A project applicant is not required to file and win a quiet title action in circuit court as a condition precedent to filing the application simply because another party disputes the applicant’s title to the property on which the proposed development is to occur. When a party disputes the applicant’s title under a legal theory that can only be resolved in circuit court, neither the county nor LUBA is in a position to resolve the legal dispute over whether the applicant/deed owner’s title is good. For that reason, the county is also not obligated to adopt findings resolving the title dispute. In circumstances where consent or lack of ownership has a bearing on an approval criteria, we have held that the decision maker may be required to impose conditions to ensure that the required consent is obtained prior to construction. However, where

ownership of the subject property is not an approval criterion, we have never held that the applicant has the obligation to quiet title in the subject property where some doubt is raised during the proceedings below as to the legality of that title, or that the decision maker is obliged to adopt findings addressing the likelihood that the applicant will prevail in a quiet title action. *VanDyke v. Yamhill County*, 78 Or LUBA 530 (2018).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** A city council errs in concluding that a city council-devised future modification to a submitted but unsatisfactory drainage and grading plan that will be reviewed in a future non-public proceeding can satisfy a requirement that the storm drainage plan “maintain[s] pre-existing levels and meet[s] planning and engineering requirements.” Pursuant to *Gould v. Deschutes County*, 216 Or App 150, 171 P3d 1017 (2007), the city council must determine whether the submitted drainage and grading plan complies with the approval criteria or must consider the modifications to the drainage plan identified by the city council in a proceeding that allows public participation. *Dodds v. City of West Linn*, 75 Or LUBA 24 (2017).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where a city code requires that the city find that “[t]he granting of the proposal will provide for a facility that is consistent with the overall needs of the community,” the city did not err by concluding that the “needs of the community” to preserve more mature Douglas fir trees in the location of a proposed stormwater facility are met by a requirement to preserve at least seven more mature trees, and imposing a condition of approval requiring that the trees be preserved. *Dodds v. City of West Linn*, 75 Or LUBA 24 (2017).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Under the Court of Appeals’ reasoning in *Davenport v. City of Tigard*, 121 Or App 135, 141, 854 P2d 483 (1993), the statutory term “standards and criteria” is sufficiently malleable to encompass a two-step code requirement that first requires that an applicant submit sufficient information to allow the local government to determine whether mitigation conditions of approval are needed for the proposed mining use, and second requires that the local government determine if conditions of approval are needed and develop and impose those conditions if they are needed. *Tidewater Contractors v. Curry County*, 65 Or LUBA 424 (2012).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** A code provision stating that when it appears that the area of a proposed partition is to be ultimately divided into four or more lots or parcels the code provisions pertaining to subdivisions apply simply authorizes the city to apply subdivision procedures and standards to a partition application, and does not itself constitute “standard” or “criteria” under which the city could deny the partition application. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where the local code does not provide procedures or standards governing a specific decision, the local government may, consistent with the federal due process clause, borrow and apply procedures and standards applicable to other types of decisions. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where a local government has no procedures governing a particular type of decision, it is consistent with the federal due process clause to adopt a written set of procedures and standards that significantly cabin the local government’s discretion and that offer all participants a reasonable opportunity to present evidence and argument. That such procedures are one-time and temporary in nature, rather than permanent code provisions does not offend the due process clause. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** An applicants’ engineer’s discussion of national traffic safety standards as an illustration of why proposed road design is safe does not have the legal effect of making those national safety standards local mandatory approval criteria where they have not been adopted as such. *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/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).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/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).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where the existence or extent of an access is disputed, and an approval criterion requires demonstration of access, that criterion may be satisfied by a condition of approval that access be confirmed by an agreement of the parties or circuit court declaratory relief. Such a condition is not an impermissible delegation of authority. *Highland Condominium Assoc. v. City of Eugene*, 37 Or LUBA 13 (1999).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** LUBA will defer to a local government’s broad interpretation of the term “transportation terminal” as including “airports” and “airport related uses” where the interpretation is not inconsistent with the text, purpose or policy of the zoning ordinance. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** The failure of the notices of the city and county planning commission hearings to include a listing of applicable review criteria from the city and county zoning ordinances and plans is not an error justifying remand where the criteria were listed in the staff report, the parties were provided an opportunity to comment on the staff report at the hearing

at which it was presented, the parties were provided almost two weeks to submit written comments on the staff report and petitioners have not demonstrated substantial prejudice. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where a local subdivision ordinance requires compliance with both the comprehensive plan policies and the ordinance provisions, and petitioner was provided with notice of the applicable approval criteria, including both comprehensive plan and local ordinance criteria, petitioner was adequately informed of the standards upon which the application would be evaluated. *Holland v. City of Cannon Beach*, 30 Or LUBA 85 (1995).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where the local code requires that a proposed driving range not alter the character of the surrounding area “in a manner which substantially limits, impairs or precludes the use of surrounding properties” for listed permitted uses, and findings acknowledge safety as a relevant consideration but simply rely upon the striking areas being more than 300 yards from adjacent properties to satisfy that safety consideration, the findings are inadequate to explain how the code standard is satisfied. *Moore v. Clackamas County*, 26 Or LUBA 40 (1993).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** A county does not improperly rely on unadopted, unofficial criteria where its findings make it sufficiently clear that the county is simply relying on material submitted by the Oregon Department of Forestry as expert testimony in determining whether a code “necessary for and accessory to” standard for approval of forest management dwellings is met. *Lardy v. Washington County*, 24 Or LUBA 567 (1993).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** Where a local code requires that a stream corridor and buffer zone be established prior to development of property, once the corridor and buffer zone are established by the local government as part of a minor partition decision, it is unnecessary for the local government to reexamine those boundaries in order to issue building and tree cutting permits for parcels created by the partition. *Forest Highlands Neigh. Assoc. v. City of Lake Oswego*, 24 Or LUBA 215 (1992).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** In the absence of a local code requirement to the contrary, a local government has no legal obligation to impose conditions of approval in lieu of denying an application for conditional use approval. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** That a city code standard for requiring that a land use application be subject to a public hearing before the planning commission, rather than being initially decided by the planning director, is subjective is not a basis for reversal or remand of the city’s decision. *J.K. Land Corporation v. City of Gresham*, 19 Or LUBA 66 (1990).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** A plan standard delegating to city staff the authority to determine the level of detail required in reports supporting the development application is not improperly vague, where the city interprets that standard to require the ultimate decision maker to determine whether sufficient detail is provided in the supporting reports. Where the city council obtains expert assessment of the subject property and provides in its findings detailed reasons why the report submitted by the applicant is inadequate, there is no basis for remand. *J.K. Land Corporation v. City of Gresham*, 19 Or LUBA 66 (1990).

**25.4.4 Local Government Procedures – Compliance with Local Ordinances/Regs – Requirements for Standards/Criteria.** A plan standard requiring a development to be designed so that “as many trees as possible can be preserved” is not impermissibly vague. *J.K. Land Corporation v. City of Gresham*, 19 Or LUBA 66 (1990).