

**25.5 Local Government Procedures – Delegation of Authority.** A condition of approval requiring that an applicant construct a proposed fence between a proposed trail and adjoining farms; specifying only that the proposed fence must be “capable of preventing dogs and people from entering adjacent farm fields”; punting all determinations regarding fence design, materials, construction, etc. to a subsequent master planning process that offers no opportunity for a public hearing or other public input; and allowing adjacent landowners to opt out of installing a fence on their property line is inadequate where the county relies on the proposed fence to address a wide variety of different potential impacts, which might require different fence designs, materials, construction techniques, and maintenance routines in order to ensure that the trail will not cause significant impacts on farm practices for purposes of the farm impacts test at ORS 215.296(1). Such a condition is also not clear and objective for purposes of ORS 215.296(2). *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

**25.5 Local Government Procedures – Delegation of Authority.** Where a local code provision requires a finding that “[t]he proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use,” and where the record includes undisputed expert testimony that fire and emergency access are inadequate unless a proposed trail and its bridges are built to certain standards, it is insufficient for the local government to state, without any supporting evidence, that it is “feasible” to design the trail and bridges to provide adequate fire and emergency access and then punt all determinations regarding trail and bridge design to a subsequent master planning process. *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

**25.5 Local Government Procedures – Delegation of Authority.** 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).

**25.5 Local Government Procedures – Delegation of Authority.** 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).

**25.5 Local Government Procedures – Delegation of Authority.** Where a local code provision requires applicants for destination resorts to demonstrate that “[a]ny negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource,” where a proposed resort’s consumptive use of groundwater is anticipated to impact the quantity and quality of water in an offsite stream, and where the applicant’s final master plan includes a mitigation plan requiring the applicant to replace the water consumed by the resort with a quantity and quality of water that will maintain fish habitat in the stream, the local government may not impose a condition of approval allowing the applicant to demonstrate that the source of the mitigation water provides the requisite quantity and quality of water at a later date without review or input by interested persons. *Gould v. Deschutes County*, 79 Or LUBA 561 (2019).

**25.5 Local Government Procedures – Delegation of Authority.** LUBA will reject a county’s interpretation of its code—that a code provision which sets forth approval criteria regarding an

application for a variance to the minimum lot size requirements within the county’s urban growth area may not apply to the county’s decision because it only applies to decisions made by the county’s planning director but not to decisions made by the planning commission or board of county commissioners—that was made for the first time in its response brief, because that interpretation is not reflected in the decision and is therefore not an interpretation by the local government. *City of Albany v. Linn County*, 78 Or LUBA 1 (2018).

**25.5 Local Government Procedures – Delegation of Authority.** ORS 215.050 and 215.060 require the county governing body to approve revisions to the comprehensive plan and to conduct at least one hearing on proposed revisions. A county violates ORS 215.050 and 215.060, where on remand of an initial governing body decision approving plan amendments, the governing body delegates to a hearings officer final decision-making authority and the conduct of the only hearing, and on remand the hearings officer approves new comprehensive plan amendments that the governing body did not consider in the governing body’s initial decision leading to the appeal to LUBA. *Setniker v. Polk County*, 75 Or LUBA 1 (2017).

**25.5 Local Government Procedures – Delegation of Authority.** A county governing body’s consent agenda “ratification” of a hearings officer’s decision approving comprehensive plan amendments is insufficient to comply with ORS 215.050 and 215.060, which require the county governing body to approve comprehensive plan amendments and to conduct at least one hearing on proposed amendments. *Setniker v. Polk County*, 75 Or LUBA 1 (2017).

**25.5 Local Government Procedures – Delegation of Authority.** Where a county code provides a methodology for interpreting ambiguous code provisions, and provides that the “Planning Official shall interpret the meaning of the term,” that provision does not operate as a delegation of exclusive interpretative authority to the Planning Official, or require the county governing body to defer to the Planning Official’s interpretation. *Stevens v. City of Island City*, 71 Or LUBA 275 (2015).

**25.5 Local Government Procedures – Delegation of Authority.** Where the city code makes the planning commission the city’s final decision maker, but limits the planning commission’s review on appeal to errors committed by the hearings officer, the planning commission lacks authority to consider legal challenges to the city’s appeal fee. In that circumstance, LUBA lacks authority to reverse or remand the planning commission decision to the planning commission based on a legal challenge to the city’s local appeal fee. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

**25.5 Local Government Procedures – Delegation of Authority.** Where a city zoning ordinance delegates authority to a hearings official to “interpret” the zoning ordinance, the hearings official does not err by interpreting that delegation not to authorize the hearings official to declare city land use legislation ineffective to achieve the purpose it was clearly adopted to accomplish. Such a request is not a request for an “interpretation.” *Goodpasture Partners LLC v. City of Eugene*, 64 Or LUBA 258 (2011).

**25.5 Local Government Procedures – Delegation of Authority.** Where a city zoning ordinance delegates authority to a hearings official to “interpret” the zoning ordinance, without expressly

limiting such interpretations to ambiguous zoning text, that delegation nevertheless does not authorize the hearings official to interpret unambiguous zoning text to say what it does not say. *Goodpasture Partners LLC v. City of Eugene*, 64 Or LUBA 258 (2011).

**25.5 Local Government Procedures – Delegation of Authority.** An ordinance does not improperly delegate legislative responsibility to a city manager to exercise in administrative rulemaking, where that delegation was accomplished by an earlier unappealed ordinance. Any allegedly improper adoption of legislation via rulemaking in a future action by the city manager may be challenged at the time that future rulemaking occurs. *Home Builders Association v. City of Eugene*, 59 Or LUBA 116 (2009).

**25.5 Local Government Procedures – Delegation of Authority.** A county errs in failing to address whether a mitigation plan for a destination resort is consistent with applicable comprehensive plan policies governing wildlife protection, and instead finding that issues raised regarding compliance with those policies will be addressed by requiring the applicant to obtain approval of the plan from the Oregon Department of Fish and Wildlife. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

**25.5 Local Government Procedures – Delegation of Authority.** Absent a code provision to the contrary, a governing body does not exceed its authority in an appeal of a planning commission decision by approving a modification of the development application that the planning commission did not consider, and does not commit procedural error in doing so if all participants were provided an opportunity to present argument and evidence on the proposed modification. *O'Rourke v. Union County*, 54 Or LUBA 614 (2007).

**25.5 Local Government Procedures – Delegation of Authority.** Where planning staff prepare a final written decision based on an oral decision by the governing body, the far better practice is to have the governing body review and approve the final written decision prior to its issuance, rather than have staff sign and issue the written decision, to avoid potential inconsistencies between the oral decision and the final written decision. *O'Rourke v. Union County*, 54 Or LUBA 614 (2007).

**25.5 Local Government Procedures – Delegation of Authority.** A local government errs in deferring a requirement for submission of a geotechnical analysis to a later stage of the proceedings that does not provide for notice or hearing. *Township 13 Homeowners Assoc. v. City of Waldport*, 53 Or LUBA 250 (2007).

**25.5 Local Government Procedures – Delegation of Authority.** LUBA will reject a petitioner's argument that a city adjustment committee erred by failing to find that the zoning of a property reverted to its prior zoning because a rezoning condition of approval was violated, where petitioner fails to cite any authority to contradict the city's position that the adjustment committee lacks authority to question the zoning shown on the city's official zoning map. *O'Brien v. City of Portland*, 52 Or LUBA 113 (2006).

**25.5 Local Government Procedures – Delegation of Authority.** When a city steps into the shoes of a county to make land use decisions pursuant to an intergovernmental agreement, unless some controlling authority specifies otherwise, the resulting decision on behalf of the county is subject

to the statutes applicable to counties rather than those applicable to cities. *Stoloff v. City of Portland*, 51 Or LUBA 560 (2006).

**25.5 Local Government Procedures – Delegation of Authority.** Where a county code requires the “development proposal” to include a survey and assessment of archaeological sites and, if indicated, a management plan, a condition requiring that a management plan be completed prior to final plat approval is not permissible where neither the code nor the condition provides an opportunity for public participation in final plat approvals. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

**25.5 Local Government Procedures – Delegation of Authority.** A local government may defer a determination that an application to site a dwelling in a forest zone complies with certain siting criteria, provided the local government allows petitioner and other interested parties an opportunity to participate in the proceedings where that determination is made. *Hodge Oregon Properties, LLC v. Lincoln County*, 46 Or LUBA 290 (2004).

**25.5 Local Government Procedures – Delegation of Authority.** A local government’s decision that it is feasible to satisfy an approval criterion that a private road can be dedicated to the public, by imposing conditions of approval, is supported by substantial evidence where: (1) the underlying easement requires a public dedication upon request; (2) the ownership of all property underlying the proposed road is demonstrated; and (3) all owners are bound by the public dedication request. *Sisters Forest Planning Comm. v. Deschutes County*, 45 Or LUBA 145 (2003).

**25.5 Local Government Procedures – Delegation of Authority.** Even though a local government may be in a position to require a modified application, that does not mean it must do so, when a condition of approval requiring submission of a revised plat neither constitutes procedural error nor prejudices a party’s substantial rights. *Sisters Forest Planning Comm. v. Deschutes County*, 45 Or LUBA 145 (2003).

**25.5 Local Government Procedures – Delegation of Authority.** A prerequisite for application of the deferential standard of review under ORS 197.829(1) is, at a minimum, a written decision or document adopted by the governing body that contains an express or implicit interpretation of a local provision that is adequate for review. A city attorney’s interpretation of a local provision is not entitled to deference under that standard, even assuming that the city council informally directed the city attorney to apply that interpretation in denying the challenged building permits. *West Coast Media v. City of Gladstone*, 44 Or LUBA 503 (2003).

**25.5 Local Government Procedures – Delegation of Authority.** Where a hearings officer finds that it is feasible to comply with an approval standard, and imposes conditions to ensure compliance, the issue becomes whether that finding is adequate and supported by substantial evidence, not whether the hearings officer improperly deferred a finding of compliance to a later review stage. The fact that the hearings officer addresses the possibility that the solution found to be feasible might not work, and finds that if so DEQ would require that the project be scaled back, does not mean that the hearings officer deferred a finding of compliance with the approval standard or impermissibly delegated that finding to DEQ. *Baker v. Lane County*, 43 Or LUBA 493 (2003).

**25.5 Local Government Procedures – Delegation of Authority.** Where a board of commissioners declares that it is biased, recuses itself from an appeal of a hearings officer’s land use decision, and designates a hearings officer’s decision as the county’s final decision, the hearings officer’s decision may be appealed to LUBA, notwithstanding local code provisions that grant a party a right to a local appeal before the board of commissioners. *Hiebenthal v. Polk County*, 41 Or LUBA 316 (2002).

**25.5 Local Government Procedures – Delegation of Authority.** Where the local government adopts a finding of current compliance and imposes conditions to ensure compliance with an approval criterion, that those conditions require additional informal review by local government staff does not mean that the local government has impermissibly “deferred” a finding of compliance with that criterion to a later stage without notice or hearing. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**25.5 Local Government Procedures – Delegation of Authority.** A city rezoning decision conditioned on the applicant providing a geotechnical report and allowing the city to retain an independent engineer to ensure adequate monitoring and mitigation of environmental hazards during construction as part of the site development permit process, which does not provide for public hearings, does not defer discretionary decision making to a later stage of review. In that circumstance, the conditions are properly viewed as being designed to support the city’s threshold finding that environmental hazards on the subject property do not impact adjoining properties in violation of comprehensive plan objectives. *Neighbors for Livability v. City of Beaverton*, 40 Or LUBA 52 (2001).

**25.5 Local Government Procedures – Delegation of Authority.** A planned unit development (PUD) condition of approval that requires a future variance for a long cul-de-sac does not constitute an improper deferral of decision making to a later stage where the applicable variance procedures will provide substantially the same full opportunity for public involvement that would have been provided had the variance been adopted prior to or as part of the challenged PUD decision. *Dept. of Transportation v. City of Eugene*, 38 Or LUBA 814 (2000).

**25.5 Local Government Procedures – Delegation of Authority.** Under ORS 215.406, which authorizes a county governing body to appoint a hearings officer, the county governing body may use a planning commission or itself as the hearings officer. *Crook v. Curry County*, 38 Or LUBA 677 (2000).

**25.5 Local Government Procedures – Delegation of Authority.** A finding of feasibility of compliance with a code standard requiring adequate fire protection, conditioned on the fire marshal’s written approval of a proposed emergency turnaround, does not impermissibly defer a finding of compliance with that standard to a second stage of review that fails to provide notice and opportunity for hearing, where the finding of feasibility of compliance is based on evidence that the proposed emergency turnaround is acceptable to the fire marshal. *Mitchell v. Washington County*, 37 Or LUBA 452 (2000).

**25.5 Local Government Procedures – Delegation of Authority.** 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).

**25.5 Local Government Procedures – Delegation of Authority.** A county governing body does not exceed its interpretive discretion in interpreting a zoning ordinance provision that delegates responsibility to the planning director to interpret the zoning ordinance as not preventing the governing body from interpreting the comprehensive plan in the first instance following an appeal of a planning director decision to the planning commission and the county governing body. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

**25.5 Local Government Procedures – Delegation of Authority.** Where a local government approves a preliminary planned unit development application based on findings of current compliance with applicable criteria, an argument that the local government impermissibly deferred findings of compliance with applicable criteria to a second stage of review where notice and hearing requirements are not observed is more appropriately framed as an inquiry into whether the findings of current compliance are adequate and supported by substantial evidence. *Salo v. City of Oregon City*, 36 Or LUBA 415 (1999).

**25.5 Local Government Procedures – Delegation of Authority.** Approval of a 15-lot, multi-family dwelling development based on a site plan for only four of the 15 lots with a condition that the complete site plan be submitted later, impermissibly defers findings of compliance with approval criteria to a later stage without an opportunity for a hearing or a current finding that compliance with approval criteria is feasible. *Deal v. City of Hermiston*, 35 Or LUBA 16 (1998).

**25.5 Local Government Procedures – Delegation of Authority.** A local government may approve a partition and defer determination of an applicable approval criterion, provided the subsequent approval process provides the same notice and opportunity for public input as the original proceeding and the approval criteria are not so dependent on each other that they must be applied together. *Sunningdale-Case Heights Assoc. v. Washington Co.*, 34 Or LUBA 549 (1998).

**25.5 Local Government Procedures – Delegation of Authority.** Where an applicable approval criterion requires storm drainage plans that meet certain standards, the local government may not approve a land division without such storm drainage plans, or without finding that such plans are feasible and delegating the required evaluation to a sewerage agency. *Sunningdale-Case Heights Assoc. v. Washington Co.*, 34 Or LUBA 549 (1998).

**25.5 Local Government Procedures – Delegation of Authority.** A local code provision requiring an “adequate turnaround” is not satisfied by deferring the decision concerning the design of the turnaround to the fire district where (1) there will be no opportunity for public comment or a hearing, and (2) designs required by the fire district will require adjustments to or elimination of one or more lots. *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

**25.5 Local Government Procedures – Delegation of Authority.** In order for a county to find it is feasible to comply with a code requirement for an “adequate turnaround,” it must have a proposed turnaround to review. The county may not defer development and approval of a proposed

turnaround to a later stage where there is no opportunity for public hearing. *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

**25.5 Local Government Procedures – Delegation of Authority.** Because a county’s interpretation of its code to allow deferral of compliance with an approval criterion to a later stage with no opportunity for public hearing is contrary to ORS 197.763(2) and 215.416, LUBA owes that interpretation no deference under ORS 197.829(1). *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

**25.5 Local Government Procedures – Delegation of Authority.** Where the county code specifically authorizes the board of commissioners to make the initial determination on a land use application, the board of commissioners had jurisdiction to initially consider and approve a floodplain permit application, regardless of other code provisions stating the planning commission should make the initial determination on such applications. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

**25.5 Local Government Procedures – Delegation of Authority.** A city may not delegate the responsibilities associated with the administration and collection of assessments to improve streets to the city’s public street standards to private parties. *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

**25.5 Local Government Procedures – Delegation of Authority.** ORS 197.190(1) and 268.285(1) both require that a Metropolitan Service District decision to coordinate be an action taken “through its governing body.” Where the product of a Metro sponsored mediation is not formally adopted by the Metro governing body, it does not constitute an exercise of Metro’s coordination obligation under those statutes. *City of Portland v. Washington County*, 27 Or LUBA 176 (1994).

**25.5 Local Government Procedures – Delegation of Authority.** When conducting a multi-stage permit approval process, if a local government finds compliance, or feasibility of compliance, with all approval criteria during the first stage (where statutory notice and public hearing requirements are observed), it is entirely appropriate to impose conditions of approval to assure those criteria are met and to defer responsibility for assuring compliance with those conditions to planning and engineering staff as part of a later stage. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992).