

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** Where petitioners intend to argue that the county failed to apply required land use standards, failed to make necessary findings, and failed to follow the proper procedure, a colorable claim of error in support of a motion for stay has been established. *Schrepel v. Yamhill County*, 81 Or LUBA 1067 (2020).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** Arguments that a county hearings officer erred by (1) applying a judicial rule of strict construction in finding an applicant does not have a legal nonconforming asphalt plant, (2) misconstruing ORS 215.130 by failing to consider whether with conditions the asphalt plant would have no greater adverse impacts than the legal, nonconforming concrete plant it replaced, and (3) adopting material findings of fact that are not supported by substantial evidence, are sufficient to satisfy the “colorable claim of error” prong of ORS 197.845(1). *Meyer v. Jackson County*, 72 Or LUBA 462 (2015).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** An argument that a condition of approval limiting noise from a wind energy facility is inconsistent with an administrative rule governing wind energy facilities presents a colorable claim of error, where reasonable attorneys could disagree on what the meaning of the condition. *Mingo v. Morrow County*, 63 Or LUBA 515 (2011).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** A petitioner may rely on arguments made in the petition for review to establish that there is a colorable claim of error. *Examilotis v. Coos County*, 55 Or LUBA 675 (2007).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** An allegation that a tentative plan approval was placed on inactive status, was never removed from inactive status, and that the time period for reactivating an inactive plan has expired is sufficient to demonstrate a colorable claim of error even when the local government treats the tentative plan as if it had never been placed on inactive status. *Butte Conservancy v. City of Gresham*, 47 Or LUBA 604 (2004).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** When a petitioner files a petition for review concurrently with a motion for stay, the assignments of error set forth a basis for reversal or remand, and the respondent does not respond to those arguments, the petitioner has demonstrated a colorable claim of error for purposes of a stay. *Roads End Sanitary District v. City of Lincoln City*, 47 Or LUBA 645 (2004).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** Petitioners establish a colorable claim of error for purposes of ORS 197.845(1)(a) where they show that the county’s notice of decision did not mention two arguably applicable zoning code provisions, and contend that the county failed to address applicable approval standards. *Hallberg v. Clackamas County*, 31 Or LUBA 577 (1996).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** Petitioner’s contention that a local government erred by failing to adopt findings addressing certain comprehensive plan and code provisions demonstrates a colorable claim of error, if petitioner’s arguments that these plan and code provisions apply to a local government decision regarding approval of a demolition permit are not devoid of legal merit. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 565

(1995).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** Although ORS 197.845 does not require that LUBA limit the effect of a stay of a quasi-judicial land use decision, LUBA may limit the effect of such a stay to the particular geographic area or particular provisions of the stayed decision for which colorable claim of error and irreparable harm have been shown. *ONRC v. City of Seaside*, 27 Or LUBA 679 (1994).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** To satisfy the requirement of ORS 197.845(1)(a) that petitioners demonstrate a “colorable claim of error,” petitioners do not need to establish that they will prevail on the merits. Rather, the alleged errors must be sufficient, if sustained, to result in reversal or remand of the challenged decision. *Western Pacific Development v. City of Brookings*, 21 Or LUBA 537 (1991).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** To satisfy the requirement of ORS 197.845(1)(a) that petitioners demonstrate a “colorable claim of error,” petitioners do not need to establish that they will prevail on the merits. Provided petitioners’ arguments are not devoid of legal merit, it is sufficient that the errors alleged, if sustained, would result in reversal or remand of the challenged decision. *Barr v. City of Portland*, 20 Or LUBA 511 (1990).

**27.9.2 LUBA Procedures/Rules – Stays – Colorable Claim of Error.** To demonstrate a “colorable claim of error,” it is unnecessary for petitioners to establish that they will prevail on the merits. Rather, the alleged errors must be sufficient, if sustained, to result in reversal or remand of the challenged decision. *Thurston Hills Neigh. Assoc. v. Springfield*, 19 Or LUBA 591 (1990).