

28.7 LUBA Scope of Review – After Remand by Court. Where the Court of Appeals determines that LUBA’s decision was “unlawful in substance” pursuant to ORS 197.850(9)(a) because LUBA affirmed the city’s interpretation of Goal 8, Policy 1, and according to the court, the city’s interpretation of Goal 8, Policy 1 is not affirmable under ORS 197.829(1) because the city’s interpretation does not “plausibly account for the text and context of the policy,” the appropriate disposition according to OAR 661-010-0071(2)(d) is for LUBA to remand the decision to the city for further proceedings, specifically for the city to adopt a sustainable interpretation of Goal 8, Policy 1, and apply that policy, as interpreted to the application before it. *Crowley v. City of Hood River*, 79 Or LUBA 77 (2019).

28.7 LUBA Scope of Review – After Remand by Court. When the Court of Appeals remands a LUBA decision that affirmed a local government decision requiring a condition of approval that petitioner argued constituted an unconstitutional exaction of property prohibited by the Fifth and Fourteenth Amendments to the U.S. Constitution, because the Court of Appeals agreed with petitioner that the dedication is unconstitutional unless the hearings officer finds that the impacts of the proposed development would substantially impede the governmental interest advanced by the city’s standards which the conditions of approval were imposed to meet, LUBA will remand that portion of the decision to the hearings officer for reconsideration where the hearings officer adopted no findings on that point. *Hill v. City of Portland*, 78 Or LUBA 334 (2018).

28.7 LUBA Scope of Review – After Remand by Court. Where a petitioner’s challenge to a hearings officer’s finding that a mitigation plan submitted in support of a request for approval of a destination resort is specific enough for review relies almost entirely on reasoning that LUBA adopted in remanding a prior county decision, and that LUBA reasoning was effectively rejected or qualified by the Court of Appeals in an appeal of LUBA’s first decision, petitioner’s challenge to the hearings officer’s finding in the second appeal provides no basis for reversal or remand. *Central Land and Cattle Company, LLC v. Deschutes County*, 74 Or LUBA 326 (2016).

28.7 LUBA Scope of Review – After Remand by Court. LUBA has statutory authority only to dismiss, affirm, reverse or remand a land use decision, and probably lacks statutory or inherent authority to “vacate” a previously issued final opinion and order on remand from the Court of Appeals, based solely upon the parties’ stipulation. *Conte v. City of Eugene*, 66 Or LUBA 479 (2012).

28.7 LUBA Scope of Review – After Remand by Court. Where on remand from the Court of Appeals the parties stipulate to “vacate” LUBA’s original final opinion and order and “reinstate” the underlying local government decision, the parties’ intent can be given effect consistent with LUBA’s dispositional authority by issuing a final opinion and order that either dismisses the appeal or affirms the local government decision. *Conte v. City of Eugene*, 66 Or LUBA 479 (2012).

28.7 LUBA Scope of Review – After Remand by Court. Where the Court of Appeals remands a decision to LUBA to address the proper application of the Transportation Planning Rule (TPR), at OAR 660-012-0060, and on remand to LUBA the parties dispute the meaning of a TPR provision, LUBA need not resolve that dispute when during the pendency of the appeal the TPR is amended to delete the disputed TPR provision, and the TPR as amended will govern the local proceedings on remand from LUBA. *Setniker v. Polk County*, 65 Or LUBA 49 (2012).

28.7 LUBA Scope of Review – After Remand by Court. When the Court of Appeals reverses and remands a LUBA decision that affirmed a local government decision, but the Court leaves open the possibility that the offending ordinance could be amended to address the problems identified by the court, LUBA will remand rather than reverse the local government’s decision. *Friends of Eugene v. City of Eugene*, 48 Or LUBA 608 (2005).

28.7 LUBA Scope of Review – After Remand by Court. When the Court of Appeals affirms LUBA’s final opinion but does not decide all issues presented in the appeal, LUBA is not precluded from reconsidering issues that are not addressed by the Court of Appeals. *Durig v. Washington County*, 40 Or LUBA 1 (2001).

28.7 LUBA Scope of Review – After Remand by Court. Where the Court of Appeals directs LUBA to consider on remand an assignment of error directed at the local government’s application of a policy that is not a land use regulation or otherwise a land use standard, LUBA will consider the policy to be “applicable law” for purposes of LUBA’s scope of review under ORS 197.835(9)(a)(D). *Carlsen v. City of Portland*, 39 Or LUBA 93 (2000).

28.7 LUBA Scope of Review – After Remand by Court. On remand from the Court of Appeals, petitioners may not advance bases for reversal or remand before LUBA beyond those stated in the original petition for review. *Carlsen v. City of Portland*, 39 Or LUBA 93 (2000).

28.7 LUBA Scope of Review – After Remand by Court. Where an issue is resolved in a prior appeal, a petitioner in a subsequent appeal of a city’s decision on remand may not raise that issue again. *Schwerdt v. City of Corvallis*, 38 Or LUBA 174 (2000).

28.7 LUBA Scope of Review – After Remand by Court. A petitioner does not waive any rights to present argument in a subsequent LUBA appeal by failing to appeal a prior LUBA decision and assign error to conclusions in that prior LUBA decision, where the conclusions were *dictum* and would not have provided a basis for appeal. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 37 (2000).

28.7 LUBA Scope of Review – After Remand by Court. A county is not barred by law of the case from taking a position in its decision on remand that is inconsistent with a position it took in its initial decision, where the county also adopted the inconsistent position in an alternative finding in its original decision. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

28.7 LUBA Scope of Review – After Remand by Court. Where a decision is withdrawn for reconsideration following appeal to LUBA and a new ordinance is adopted without following the applicable local adoption procedures, such a procedural error provides no basis for reversal or remand where petitioner was given an opportunity for meaningful participation and there was no prejudice to petitioner’s substantial rights. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

28.7 LUBA Scope of Review – After Remand by Court. Where a local government denies a permit application following remand from the Court of Appeals and specifies more than one basis

for the denial, in reviewing a subsequent appeal of the denial on remand LUBA need only review and sustain one of the bases for denial. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).