

32.1 Planned Unit Developments – Procedures. When the purpose of a condition is to set a baseline to measure traffic impact throughout multiple phases of the development consistent with the “trip cap” imposed to meet Transportation Planning Rule, at OAR 660-012-0060 requirements without mitigation, a hearings officer does not err in concluding that the standards are to be interpreted based on the use of the same version of the Institute of Transportation Engineers Trip Generation Manual (ITE Manual). Additionally, the ITE Manual is a professional treatise that sets out methods for making evidentiary judgments regarding the traffic impacts of development, but it is not part of the city’s acknowledged comprehensive plan or land use regulations, and therefore is not itself “standards and criteria” for purposes of ORS 227.178(3)(a) or 227.173(1), at least as applied in the present circumstance, thus compliance with the trip cap be determined by consistent applications of the same ITE Manual codes used to establish the trip cap. *Willamette Oaks LLC v. City of Eugene*, 78 Or LUBA 63 (2018).

32.1 Planned Unit Developments – Procedures. LUBA will affirm as correct a city planning commission’s interpretation that a city code provision that prohibits “grading” on portions of a site that contains steep slopes does not prohibit all development activities that disturb soil, where the city’s code does not define the terms “grading” and “excavating,” but does define “development” as including both “grading” and “excavating” as separate terms. LUBA will affirm the city planning commission’s conclusion that the grading prohibition is not violated by a PUD site plan that requires digging holes to install support posts for cantilevered dwellings and digging and refilling trenches to install water lines in areas containing steep slopes because those activities constitute excavation and not grading. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78 Or LUBA 418 (2018).

32.1 Planned Unit Developments – Procedures. Where the city’s code provides that development application materials “shall reflect that consideration has been given to [tree] preservation,” the city does not err in finding that the code requirement is met when the applicant’s submissions demonstrate that consideration was given to tree preservation through a tree survey and site design that preserves trees within a stand on slopes greater than 25 percent, contains yard sizes that decrease critical root zone impacts, and preserves trees between and around homes. Those application materials reflect that consideration was given to tree preservation even though some high and moderate priority trees must be removed to develop streets, utilities and building pads, and preservation of trees on residential lots would be left to the discretion of future lot owners. The code does not require the actual preservation of trees; instead, the code requires a project applicant to consider tree preservation and submit evidence to demonstrate that such consideration occurred. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78 Or LUBA 418 (2018).

32.1 Planned Unit Developments – Procedures. Extension and improvement of a residential access road over an existing public right-of-way is not subject to a city code section that requires streets that are “dedicated to the public by the applicant * * * conform” with adopted street right-of-way maps. A proposed improvement of a type of street that is not depicted on the city’s adopted street right-of-way map does not fail to “conform” with that map. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78 Or LUBA 418 (2018).

32.1 Planned Unit Developments – Procedures. LUBA will affirm a governing body’s interpretation of the phrase “designated common area” as used in a plan policy governing a resort community zone to mean something different than a definition of “common area” in an unrelated section of the comprehensive plan that cross-references the definition of “common property” as used in the Oregon Planned Communities Act at ORS 94.550(7), where the latter definition was adopted at a different time and to serve a different purpose than the plan policy governing the resort community zone. *Kine v. Deschutes County*, 75 Or LUBA 407 (2017).

32.1 Planned Unit Developments – Procedures. Where a major modification of a PUD may not be approved under local law if it would result in a “substantially new proposal,” the previously approved 10-phase, 30-acre mixed-use development that includes an 82-unit senior assisted and independent living facility must be compared with a 10-phase, 30-acre mixed-use development that substitutes a smaller senior and assisted living facility for the 82-unit senior assisted and independent living facility. In applying the “substantially new proposal” standard, it is not appropriate to limit the comparison to the 82-unit senior assisted and independent living facility and the smaller senior and assisted living facility. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

32.1 Planned Unit Developments – Procedures. A one-half-acre size requirement threshold for requiring PUD approval is not a mere application requirement that can be overlooked to require PUD approval for proposals of less than one-half acre. Even if the city intended to delete that threshold for PUD proposals near transit stations, where the threshold clearly applies it cannot be overlooked to give effect to an intent that is inconsistent with the text of the zoning ordinance. *Mintz v. City of Beaverton*, 66 Or LUBA 118 (2012).

32.1 Planned Unit Developments – Procedures. Where a development code requires that PUD applicants prepare a “land use analysis” that establishes that specified minimum and maximum development levels in a particular zoning district will be met when all of the properties in that zoning district are developed, LUBA will not assume that without explicit direction about how to go about preparing such a “land use analysis,” PUD applicants will be unable to do so. *Mintz v. City of Beaverton*, 66 Or LUBA 118 (2012).

32.1 Planned Unit Developments – Procedures. A local government does not err in failing to impose a condition of approval ensuring that the final planned unit development plan contains senior housing consistent with the approved tentative plan, where the tentative plan includes such housing and an ordinance requires that the final plan can only be approved if it is “substantially consistent” with the tentative plan. *NE Medford Neighborhood Coalition v. City of Medford*, 53 Or LUBA 277 (2007).

32.1 Planned Unit Developments – Procedures. Where the “Decision” section of a land use decision expressly grants only “planned unit development subdivision plan” approval, but the decision read as a whole clearly also grants the zoning map amendment that was included in the planned unit development and subdivision plan application, LUBA will interpret the decision to grant all three of the requested approvals. *Wasserburg v. City of Dunes City*, 52 Or LUBA 70 (2006).

32.1 Planned Unit Developments – Procedures. Where an application for city subdivision approval includes a request for planned unit development approval that allows the property to be divided in ways that the property could not be divided without planned unit development approval, the decision granting planned unit development subdivision approval is a land use decision, not a limited land use decision. *Wasserburg v. City of Dunes City*, 52 Or LUBA 70 (2006).

32.1 Planned Unit Developments – Procedures. A city may not accept a revised planned unit development plan the day before an appeal without providing the local parties an opportunity to review and respond to the revised plan. *Baker v. City of Garibaldi*, 49 Or LUBA 437 (2005).

32.1 Planned Unit Developments – Procedures. A nonbinding preliminary PUD approval is equivalent to a tentative decision following a pre-application conference or review, and therefore does not trigger the statutory requirement under ORS 227.175(3) for a public hearing or the right of local appeal to challenge a permit decision rendered without a prior public hearing. *Neighbors for Sensible Dev. v. City of Sweet Home*, 40 Or LUBA 21 (2001).

32.1 Planned Unit Developments – Procedures. ORS 227.175 sets forth certain minimum procedural requirements for processing permit applications, but does not prohibit or regulate informal, nonbinding proceedings for preliminary approvals of PUDs that may precede the public hearing(s) required by statute. *Neighbors for Sensible Dev. v. City of Sweet Home*, 40 Or LUBA 21 (2001).

32.1 Planned Unit Developments – Procedures. 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).

32.1 Planned Unit Developments – Procedures. Challenges that are directed at a previously approved preliminary plat for a planned unit development in an appeal of final plat approval are an impermissible collateral attack on the prior decision. *Bauer v. City of Portland*, 38 Or LUBA 715 (2000).

32.1 Planned Unit Developments – Procedures. 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).

32.1 Planned Unit Developments – Procedures. A city commission is within its interpretative discretion under ORS 197.829 to determine that a requirement that planned unit development within a natural hazards zone be consistent with applicable comprehensive plan policies is satisfied

by a demonstration of compliance with ordinance standards implementing those comprehensive plan policies. *Salo v. City of Oregon City*, 36 Or LUBA 415 (1999).

32.1 Planned Unit Developments – Procedures. Absent local provisions to the contrary, only the preliminary plat approval, and not the entire record of the preliminary plat approval, is part of a final PUD plan record. *Santiam Properties v. City of Stayton*, 35 Or LUBA 790 (1998).

32.1 Planned Unit Developments – Procedures. Geotechnical studies are appropriately included in the record where reference to these studies in the final PUD plan approval order indicates that they were considered by the final decision maker. *Santiam Properties v. City of Stayton*, 35 Or LUBA 790 (1998).

32.1 Planned Unit Developments – Procedures. When the only decision appealed is a decision changing the required sequence of PUD phases, and the assignments of error provide no basis for reversing or remanding that decision, the decision will be affirmed. LUBA will reject assignments of error that challenge other related decisions that were not appealed. *Claus v. City of Sherwood*, 35 Or LUBA 120 (1998).

32.1 Planned Unit Developments – Procedures. The deadline for submitting a final plat is a “review procedure” rather than an “informational” or “other [subdivision] requirement” for purposes of choosing whether the two-year deadline imposed on subdivisions or the three-year deadline imposed on PUDs applies, where petitioner does not explain why the two-year time limit is informational or substantive and interpreting the requirement as being substantive would be inconsistent with the code’s purpose of allowing concurrent processing of the final subdivision and PUD plans. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

32.1 Planned Unit Developments – Procedures. A code provision that requires that final subdivision and PUD plans be submitted within three years after preliminary approval is granted does not require that the versions of the final subdivision and PUD plans that are ultimately approved be submitted before the three-year deadline. Provided the subdivision and PUD plans are submitted before the deadline, the plans may be modified after the deadline in response to city review or public input. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

32.1 Planned Unit Developments – Procedures. Where a code contains both a provision governing the expiration of quasi-judicial land use approvals generally and a provision specifically governing the expiration of planned development approvals, the local governing body is within its discretion under ORS 197.829 and *Clark* in interpreting the code to mean the expiration of planned development approvals is governed *only* by the specific code provision. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

32.1 Planned Unit Developments – Procedures. If a code includes provisions for extending planned development approvals and for requesting changes in approved final development plans, the local governing body is within its discretion under ORS 197.829 and *Clark* in interpreting these provisions together to mean if a change in an approved final development plan is requested before the original approval expires, the approval does not expire while the modification application is

being processed, and a separate extension application is not necessary. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

32.1 Planned Unit Developments – Procedures. 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).

32.1 Planned Unit Developments – Procedures. Where the record shows the local government conducted the proceeding leading to the challenged decision modifying an approved PUD as a separate permit proceeding initiated by a separate PUD modification application, under OAR 661-10-025(1)(b), the record includes only those items that were placed before the local decision maker during the course of the proceedings initiated by the modification application. *ONRC v. City of Oregon City*, 28 Or LUBA 775 (1994).

32.1 Planned Unit Developments – Procedures. Where a decision approving a planned development states in one place that it grants detailed development plan approval, but it is clear from the decision and findings as a whole that it grants conceptual development plan approval, the single erroneous reference is a harmless error and provides no basis for reversal or remand. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

32.1 Planned Unit Developments – Procedures. Where petitioners argue a city cannot approve an amendment to a PUD development plan on remand from LUBA, because the underlying development plan approval expired *after* LUBA remanded the initial city decision approving the amendment, petitioners did not waive this issue. The issue was not ripe to be raised at the time of the city’s initial proceedings on the amendment or during petitioners’ first appeal to LUBA. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

32.1 Planned Unit Developments – Procedures. A letter sent by the planning director to the applicant, four months before a city decision granting PUD final development plan approval, does not constitute a final, appealable city decision with regard to the duration of the subsequent PUD final development plan approval. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

32.1 Planned Unit Developments – Procedures. Where the planning commission delegated to the city manager authority to grant extensions of PUD overall development plan approval, and neither the planning commission’s decision nor the city manager’s decision exercising that authority was appealed, LUBA will not consider arguments that the planning commission improperly delegated authority to the city manager in an appeal of a subsequent city decision granting final PUD approval. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

32.1 Planned Unit Developments – Procedures. A local code may provide a PUD process in which an approved PUD overall development plan, rather than the comprehensive plan standards

applied in approving the overall development plan, governs final PUD approval. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

32.1 Planned Unit Developments – Procedures. As long as comprehensive plan issues relating to the impact of an entire PUD on internal and external roadways were addressed in approving an overall development plan, under applicable local code provisions particular questions concerning those issues that were not raised in granting overall development plan approval may not be raised during final PUD approval. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

32.1 Planned Unit Developments – Procedures. Where a prior city decision approving a PUD preliminary development plan for a shopping center does not clearly identify the particular commercial uses it approves, but describes the applicant’s proposal and states that the proposed uses are approved, submittal of a site plan proposing an entirely different mixture of commercial uses constitutes more than a minor modification of the approved development plan. *Owen Development Group, Inc. v. City of Gearhart*, 25 Or LUBA 88 (1993).

32.1 Planned Unit Developments – Procedures. Where the local code establishes a “two-step” process for approving PUDs which requires that (1) preliminary development plan approval be granted only if the PUD will fulfill all applicable code requirements, and (2) final development plan approval be granted if the final plan complies with the preliminary plan and any conditions imposed thereon, the local government has created a PUD master plan approval process which governs all further aspects of the PUD development process. *Gilson v. City of Portland*, 22 Or LUBA 343 (1991).

32.1 Planned Unit Developments – Procedures. A two-stage approval procedure for planned unit developments, with an initial determination of feasibility required for preliminary (first stage) approval, serves two competing public policies—the public policy that inordinate expense not be incurred prior to preliminary approval and the public policy favoring avoidance of the inordinate expense that would result where final approval must be denied because the project is ultimately determined to be unfeasible. *Bartels v. City of Portland*, 20 Or LUBA 303 (1990).

32.1 Planned Unit Developments – Procedures. Under code provisions for two stage approval of planned unit developments, the finding of “feasibility” required for first stage approval requires a finding that solutions to problems posed by the project are “possible, likely, and reasonably certain to succeed.” Provided the required finding of “feasibility” is made at the first stage, where public hearings are provided, resolution of precise solutions and technical matters may occur as part of second stage approval without additional public hearings. *Bartels v. City of Portland*, 20 Or LUBA 303 (1990).

32.1 Planned Unit Developments – Procedures. Where the local code requires that a PUD application include a landscaping plan, and the landscaping plan is not available anywhere in the record and is necessary for the city to adequately address compliance with an applicable approval standard, the omission of the plan is not a harmless or procedural error. *Schryver v. City of Hillsboro*, 20 Or LUBA 90 (1990).

32.1 Planned Unit Developments – Procedures. Where the local code provides for the approval of an overall PUD development plan and allows approved PUDs to be developed in phases, and the local government addresses the public services impacts of an entire PUD and finds relevant plan policies satisfied in approving such an overall PUD plan, the local government is not required to readdress plan public services policies in subsequent approval of a development phase, provided the requested phase approval is consistent with the type and intensity of development in the approved overall PUD plan. *Hoffman v. City of Lake Oswego*, 20 Or LUBA 64 (1990).