

28.4 LUBA Scope of Review – Postacknowledgment Amendments. A reference in an ordinance to a city’s engineering design manual is not sufficient to incorporate the manual into the city’s acknowledged plan and land use regulations. *Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1 (2013).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Goal 2 is not violated by adopting a plan amendment that references unacknowledged land use regulations. *Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1 (2013).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. That a county’s comprehensive plan was acknowledged in the 1990s to comply with Goal 4 does not shield the county from the obligation, at ORS 197.646(1) and (3), to apply subsequently adopted amendments to Goal 4 or the Goal 4 rule until the county incorporates those amendments into its comprehensive plan. Because the Goal 4 rule was amended in 2008 and 2011 to provide a prioritized list of data sources a county must consider when determining whether land is forest land subject to Goal 4, the county cannot simply apply its acknowledged comprehensive plan standards for identifying forest land, but must also apply the amended Goal 4 rule, until the county incorporates those rule amendments into its comprehensive plan. *Rogue Advocates v. Josephine County*, 66 Or LUBA 45 (2012).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Because OAR 660-006-0010 provides a set of prioritized, mandatory sources of data and a prescribed alternative method that must be used to determine whether land is forest land subject to Goal 4, the applicability of OAR 660-006-0010 cannot be avoided by concluding, based on different data or different methodology, that land is not forest land subject to Goal 4. *Rogue Advocates v. Josephine County*, 66 Or LUBA 45 (2012).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. An order that simply adopts additional findings following a LUBA remand, but does not “change” any acknowledged comprehensive plan or land use regulation, is not a post-acknowledgment plan amendment, and the deadline to appeal the order to LUBA is therefore 21 days from the date the decision became final, pursuant to the first sentence of ORS 197.830(9), not 21 days from the date that notice of the order was mailed. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. The 21-day period to appeal to LUBA under the second sentence of ORS 197.830(9) commences on the date notice of the decision is mailed to “parties entitled to notice under ORS 197.615.” The “notice” referred to in ORS 197.830(9) is the written notice that ORS 197.615(4) requires the local government to mail to participants, not the copy of the final decision that ORS 197.615(1) requires the local government to submit to DLCD. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Where a petitioner participated in the proceedings leading to adoption of a post-acknowledgment plan amendment, and received timely notice of the decision, the deadline to appeal the

decision to LUBA is 21 days from the date the notice was mailed to petitioner, not 21 days from the date the local government submits a copy of the decision to DLCD. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Under *ODOT v. City of Oregon City*, 153 Or App 705, 959 P2d 615 (1998), the deadline to appeal a post-acknowledgment plan amendment to LUBA under the second sentence of ORS 197.830(9) is 21 days from the date the local government mails notice of the decision to parties entitled to notice, even for persons who did not participate in the proceedings and thereby become entitled to notice. However, *ODOT* does not suggest that notice failures to some parties tolls the 21-day deadline for a petitioner who did receive notice but failed to appeal the decision to LUBA within the 21-day period. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Failure to assign error to the county’s primary finding, pursuant to ORS 197.835(7), that the text amendment is consistent with “specific policies” in the county’s comprehensive plan that are the basis for the amendment, makes it unnecessary to address the petitioner’s challenge to the county’s alternative findings that the amendment is consistent with the statewide planning goals. *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. A local government’s failure to provide notice to the Department of Land Conservation and Development of a proposed amendment to the zoning map requires remand. *NE Medford Neighborhood Coalition v. City of Medford*, 53 Or LUBA 277 (2007).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. LUBA’s scope of review over periodic review land use decisions extends to all legal issues that are properly within LUBA’s statutory scope of review, but it does not include review for compliance with statewide planning goals or other questions that are within LCDC’s scope of review in periodic review. *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. LUBA’s scope of review under ORS 197.835(9) must be read together with and is limited by ORS 197.825(2)(c), which excludes periodic review matters over which LCDC has review authority under ORS 197.628 to 197.650. Under those statutes, a city land use decision could be narrowly tailored to comply with a periodic review work task, and still be reversible by LUBA because it exceeds the city’s jurisdiction, is based on an improper construction of a law that LCDC does not consider in periodic review or because the city committed procedural errors in adopting the decision. *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. It is not within LUBA’s scope of review to address whether existing code design review standards comply with the ORS 197.307(3)(b) requirement for “clear and objective” approval

standards, in the context of a post-acknowledgment plan amendment that rezones property to allow uses that will be subject to approval under the existing design review standards, where the challenged decision does not amend the design review standards or attempt to bring any part of the city's code into compliance with ORS 197.307(3)(b). *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Assignments of error arguing that an ordinance adopted to satisfy a periodic review work task does not comply with Goals 2 and 14 are matters subject to the exclusive jurisdiction of the Land Conservation and Development Commission. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Where county comprehensive plan standards for identifying agricultural land implement the Goal 3 definition of agricultural land, and an evidentiary challenge to a finding under the comprehensive plan standards that certain land is agricultural land is inseparable from the question of whether that land is agricultural land under Goal 3, LUBA lacks jurisdiction to address the challenge under the county's comprehensive plan standards. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. The Land Conservation and Development Commission has exclusive jurisdiction to review allegations that a county's proceedings under periodic review failed to comply with Goal 1 and LCDC's rules for conducting periodic review. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. LUBA has exclusive jurisdiction to review allegations that a county's proceedings failed to comply with procedural requirements that are independent of goal or administrative-rule based procedural requirements. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Where the challenged decision is adopted to fulfill a periodic review work task, and the issue before LUBA can be framed as either (1) a matter of compliance with a statute, comprehensive plan or land use regulation or (2) a matter of compliance with a statewide planning goal or administrative rule, LUBA has jurisdiction over the issue only if the statutory, plan or code obligation goes beyond or is different from the obligation imposed by the goal or rule. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. An argument that a county comprehensive plan amendment adopted to fulfill a periodic review work task is inconsistent with a city comprehensive plan provision is an issue that is cognizable as a Goal 2 consistency issue, and thus is an issue that is within LCDC's exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Findings challenges are necessarily derivative of the underlying criteria the findings address. Where the county code requires adoption of findings supporting legislative decisions, whether jurisdiction to review an adequate findings challenge in a legislative decision adopted to fulfill a periodic review work task lies with LUBA or LCDC depends on whether the findings address goal or rule compliance issues subject to LCDC’s exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. A local code requirement for findings demonstrating that legislative decisions are “in the public interest and will be of general public benefit” does not implicate any Goal or rule requirements, and thus a challenge that the local government failed to adopt adequate findings addressing that criterion in adopting a decision to fulfill a periodic review work task is subject to LUBA’s exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. An initial notice of a proposed post-acknowledgment amendment submitted to DLCD pursuant to ORS 197.610(1) and OAR 660-018-0020(1) that does not include the “text” of the proposed amendment as defined by OAR 660-018-0020(2) is inadequate to perform the notice function required by ORS 197.610(1). *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. An initial notice of a proposed post-acknowledgment amendment submitted to DLCD pursuant to ORS 197.610(1) and OAR 660-018-0020(1) that includes the text of the proposed amendment as that term is defined in OAR 660-018-0020(2), but was submitted approximately 23 days prior to the city’s initial evidentiary hearing is adequate to perform the notice function required by ORS 197.610(1). *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Where a city has a process requiring that proposed amendments to a comprehensive plan and zoning code be subject to hearing and review by the planning commission and proposed design review guidelines be subject to hearing and review by the design commission, a notice of proposed amendment regarding the matters before the planning commission is not sufficient to apprise DLCD or others who receive notice pursuant to ORS 197.610(2) of the design review proceedings. *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. An initial notice of a proposed post-acknowledgment amendment submitted to DLCD pursuant to ORS 197.610(1) and OAR 660-018-0020(1) that erroneously states that the initial evidentiary hearing had been held and does not indicate whether further opportunities to provide evidence are available is not adequate to satisfy ORS 197.610(1), which requires that notice of proposed post-acknowledgment land use amendments be

submitted to DLCD at least 45 days prior to the initial evidentiary proceedings on those amendments. *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. Not every violation of the requirement at ORS 197.610(1) and its implementing rule that a local government provide notice of proposed post-acknowledgment plan amendments to the Department of Land Conservation and Development Commission (DLCD) more than 45 days before the initial public hearing is a substantive error that must result in remand. Failure to specify all of the proposed zone changes on the form provided to DLCD is, at most, procedural error that does not warrant remand absent a demonstration of prejudice to petitioner’s substantial rights. *Stallkamp v. City of King City*, 43 Or LUBA 333 (2002).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. A post-acknowledgment amendment to an ordinance implementing Goal 5 must be remanded, where the city failed to provide the notice to DLCD required by ORS 197.610(1) and 197.615(1). *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 453 (2002).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. LCDC’s 1985 acknowledgement of a county’s rural residential zone has the legal effect of establishing that the rural residential zoning district *may* be applied consistent with Goal 14 to rural lands outside a UGB. However, the 1985 acknowledgment does not have the legal effect of establishing that *all* future applications of the zoning district to particular properties, no matter what the circumstances, will necessarily comply with Goal 14. *DLCD v. Klamath County*, 40 Or LUBA 221 (2001).

28.4 LUBA Scope of Review – Postacknowledgment Amendments. A finding that Goal 14 is satisfied because the provision of community sewer or water systems would be economically infeasible does not establish that such systems will not be constructed, where it is possible that an application for clustered residential development may make such community services economically feasible and the county did not adopt conditions of approval or other mechanisms to prohibit the establishment of community sewer or water systems. *DLCD v. Klamath County*, 40 Or LUBA 221 (2001).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. The deadline for filing a notice of intent to appeal for decisions adopted pursuant to ORS 197.610 through 197.625 is 21 days from the date notice is mailed to DLCD and to parties entitled to notice under ORS 197.615. *DeBell v. Douglas County*, 39 Or LUBA 695 (2001).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. An appeal that challenges a legislative decision that is final more than 21 days after the notice of legislative decision is mailed to parties entitled to notice pursuant to ORS 197.615 will be dismissed as untimely filed. *DeBell v. Douglas County*, 39 Or LUBA 695 (2001).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. LUBA has no jurisdiction to review provisions of an acknowledged comprehensive plan for compliance with the Transportation Planning Rule, where those plan provisions are not amended by

the challenged decision and are not affected by the challenged decision in a way that affects their compliance with the statewide planning goals. *Dept. of Transportation v. Douglas County*, 34 Or LUBA 608 (1998).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Where petitioners' arguments are directed at unamended provisions of an acknowledged comprehensive plan rather than the comprehensive plan amendments adopted by the challenged decision, petitioners present no basis for reversal or remand. *Dept. of Transportation v. Douglas County*, 34 Or LUBA 608 (1998).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. During periodic review, the existing, acknowledged versions of the county's plan and zoning ordinance continue to apply until they are amended as a result of the acknowledgment of a final decision. Where periodic review is ongoing, the county may amend its plan and zoning map by redesignating and rezoning property to any existing acknowledged designation or zone, as long as the amendment does not violate any statute, rule or statewide planning goal, and LUBA has jurisdiction to review such amendments. *Brown v. Jefferson County*, 33 Or LUBA 418 (1997).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. In approving comprehensive plan and zoning map amendments, the county's findings must demonstrate that Goal 14 is satisfied without reliance on past practices or on plan and code provisions that are subject to revision during periodic review. *Brown v. Jefferson County*, 33 Or LUBA 418 (1997).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Where the county's decision to apply overlay zoning directly implements plan policies that were previously determined to comply with the statewide planning goals, and the policies are sufficiently specific to provide the basis for case-by-case evaluation of development applications, ORS 197.835(7)(b) does not require the local government to apply the goals independently to the decision. *Cuddeback v. City of Eugene*, 32 Or LUBA 418 (1997).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Where challenged post-acknowledgment comprehensive plan and land use regulation amendments do not directly affect a local government's acknowledged Goal 5 inventory, and petitioner does not identify any inventoried Goal 5 resources allegedly affected by the challenged amendments, petitioner provides no basis for reversal or remand. *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. When LUBA reviews a post-acknowledgment comprehensive plan or land use regulation amendment for compliance with Goal 8, the relevant concern is whether the amendment has direct or secondary effects on "recreation areas, facilities and opportunities" inventoried and designated by the acknowledged plan to meet the local government's recreational needs. Goal 8 does not require that there will be no adverse effects on any recreational activity

occurring in the vicinity of the proposed amendment. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Where a post-acknowledgment code amendment adds a certain type of use to the uses allowed in a particular zone, comprehensive plan provisions which do not refer to that type of use and could be consistent with a number of different code amendments are not "specific" policies providing the basis for the code amendment, as referred to in ORS 197.835(5)(b). *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Where, under applicable 1991 statutory provisions, (1) a local government elected to proceed with periodic review under the 1989 statutes that were in effect when its periodic review was initiated, and (2) a comprehensive plan and land use regulation amendment adopted as part of such periodic review is appealed to LUBA, LUBA's review is governed by the statutes in effect in 1989. *Williams v. Clackamas County*, 27 Or LUBA 602 (1994).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Under applicable 1989 statutory provisions, matters subject to periodic review by DLCDD were excluded from LUBA's jurisdiction. Under ORS 197.640(3)(1989), where a plan or land use regulation amendment is subject to periodic review, DLCDD has review authority over matters concerning the amendment's compliance with the statewide planning goals. *Williams v. Clackamas County*, 27 Or LUBA 602 (1994).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Comprehensive plan amendments must comply with the Statewide Planning Goals. ORS 197.175(2)(a). Where a challenged comprehensive plan amendment does not address Goal 9 (Economic Development), and Goal 9 appears to be relevant to the challenged decision, LUBA will remand the decision. *Graville Properties, Ltd. v. City of Eugene*, 27 Or LUBA 583 (1994).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Where post-acknowledgment legislative land use regulation amendments make portions of a county's acknowledged program for wetlands protection inapplicable to rural wetlands, the county must demonstrate, either in the decision or through argument and citations to the record in its brief, that with regard to rural wetlands, the amendments result in a program that complies with Goal 5 and the Goal 5 rule. *Redland/Viola CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Where property is the subject of a concurrent comprehensive plan map amendment and zone change, the zone change is made under an unacknowledged plan amendment and must comply with those statewide planning goals applicable to the unacknowledged plan amendment. ORS 197.175(2)(e) and 197.625(3)(b). *Roloff v. City of Milton-Freewater*, 27 Or LUBA 256 (1994).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Any amendment to an acknowledged land use regulation must comply with all applicable statewide planning goals, if the comprehensive plan "does not contain specific policies or other provisions which provide the basis for the regulation." ORS 197.835(5)(b). *Roloff v. City of Milton-Freewater*, 27 Or LUBA 256 (1994).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. If a local government does not provide notice to DLCDC of a post-acknowledgment comprehensive plan or land use regulation amendment, as required by ORS 197.610 and 197.615, it improperly construes substantive provisions of applicable law and, under ORS 197.835(7)(a)(D), the challenged post-acknowledgment amendment decision must be remanded. *Oregon City Leasing, Inc. v. Columbia County*, 26 Or LUBA 203 (1993).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. The post-acknowledgment amendment notice requirements of ORS 197.610(1) and 197.615(1) are procedural in nature. Local government failure to follow these requirements provides a basis for reversal or remand only if such error prejudiced petitioner's rights to an adequate opportunity to prepare and submit its case and a full and fair hearing before the local government. *Oregon City Leasing, Inc. v. Columbia County*, 25 Or LUBA 129 (1993).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. After acknowledgment, unless a challenged local government land use decision is an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation, LUBA has no authority to reverse or remand the decision for failure to comply with the statewide planning goals. *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. If a single legislative decision *both approves* plan and land use regulation amendments with regard to some Goal 5 resource sites and *denies* such amendments with regard to other sites, such a legislative decision would not qualify as a decision from which an appeal to this Board is foreclosed under ORS 197.830(2) and 197.620(1). *ODOT v. Klamath County*, 25 Or LUBA 761 (1993).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. If a challenged permit decision misconstrues an acknowledged land use regulation, that provides a basis for reversing or remanding the decision under ORS 197.835(6) and (7)(a)(D). It does not mean the challenged decision is a land use regulation amendment. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Under ORS 197.835(5)(b), an amendment to a local government land use regulation is subject to reversal or remand for failure to comply with the Statewide Planning Goals, unless the comprehensive plan contains "specific policies * * * which provide the basis for" the amended regulation. *Ramsey v. City of Portland*, 23 Or LUBA 291 (1992).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. In periodic review, DLCD is not limited in its goal compliance review of post-acknowledgment plan and land use regulation amendments to particular goal requirements that may have triggered a periodic review factor under ORS 197.640(3) (1989). Therefore, while LUBA has concurrent jurisdiction to review post-acknowledgment plan and land use regulation amendments submitted for periodic review, under ORS 197.825(2)(c) (1989) LUBA's scope of review over such amendments does not include review for goal compliance. *1000 Friends of Oregon v. City of Troutdale*, 23 Or LUBA 219 (1992).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Amendments to acknowledged comprehensive plans and land use regulations are reviewable by LUBA for compliance with the statewide planning goals. *Gray v. Clatsop County*, 22 Or LUBA 270 (1991).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Amendments of acknowledged comprehensive plans and land use regulations must be consistent with controlling provisions of the acknowledged comprehensive plan. *DLCD v. Polk County*, 21 Or LUBA 463 (1991).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Where an acknowledged land use regulation previously authorized a particular use, but is amended to adopt new approval standards for the use, LUBA has authority to review the new approval standards for compliance with the Statewide Planning Goals. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421 (1990).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. LUBA has authority to review any amendment to an acknowledged comprehensive plan for compliance with the goals. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Whether a comprehensive plan amendment complies with a particular goal in certain instances may be determined by the acknowledgment of a plan or land use regulation provision controlling such an amendment, if the amendment cannot be invalidated without holding, in all but name, that the acknowledged plan or land use regulation provision is also invalid. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

28.4 LUBA Scope of Review – Post-acknowledgment Amendments. Statutory requirements do not become inapplicable after acknowledgment of local government plans and land use regulations. LUBA has authority to review an amendment to an acknowledged plan and zoning map to determine whether it complies with the destination resort statute. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).