

1.1.1 Administrative Law – Interpretation of Law – Generally. Under *Flying J. Inc. v. Marion County*, 49 Or LUBA 28, 36-37, *aff'd* 201 Or App 99, 117 P3d 1027 (2005), where the text of an ordinance that adopts zoning designation amendments expresses a clear intent that the prior zoning for a parcel be retained but the map attached to the ordinance shows a change in zoning, that conflict is resolved in favor of the text. *Turner v. Jackson County*, 62 Or LUBA 199 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where one sentence of a zoning ordinance provides that “any dispute” concerning the zoning of property is to be resolved by reference to the official zoning map, but that sentence appears immediately after a sentence that states that initial zoning boundary determinations are to be made based on maps generated by the local government’s GIS system, those sentences should be read together to require that any disputes that arise based on the GIS maps or facts that arise after the zoning ordinance was adopted be resolved in favor of the official zoning map. But those sentences of the zoning ordinance do not require that a text/map conflict in the enacting zoning ordinance itself be resolved in favor of the official zoning map, where it is clear the new zoning shown for a property on the official zoning map was a mistake, and the text of the enacting ordinance clearly states that the zoning of the property was not changed by the ordinance. *Turner v. Jackson County*, 62 Or LUBA 199 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. An interpretation of a city landslide hazard regulation that gives no effect to the main clause of the regulation and only gives effect to the subordinate clause arguably runs afoul of the interpretive principle embodied in ORS 174.010, which prohibits interpreting statutes in a way that omits statutory language that has been included in the statute. *Gravatt v. City of Portland*, 62 Or LUBA 382 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the Goal 4 rule incorporates a definition in the Oregon Structural Specialty Code, the version of the Code in effect when the Goal 4 rule was adopted controls, not the Code as subsequently amended, to avoid running afoul of constitutional prohibitions on delegating legislative authority. *Central Oregon Landwatch v. Jefferson County*, 62 Or LUBA 443 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where one section of a zoning ordinance permits the city engineer to approve more than one driveway access to lots and parcels “subject to access requirements,” and another section of the zoning ordinance setting out the city’s access requirements generally prohibits direct access to arterials where a lot or parcel already has access to a lower category roadway, a city correctly denies the request for the direct arterial access. In that case the two sections of the zoning ordinance do not conflict; the contingent authority to grant more than one driveway is simply limited by the section setting out access requirements. *Athletic Club of Bend, Inc. v. City of Bend*, 61 Or LUBA 349 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government’s interpretation of its ordinance is not “inconsistent” with the language of the ordinance,

within the meaning of ORS 197.829(1)(a), if the interpretation is plausible, given the interpretive principles that ordinarily apply to the construction of ordinances under the rules of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. In determining whether a local government’s interpretation of local land use law is inconsistent with the “express language” of the local land use law, LUBA and the appellate courts apply the statutory construction principles in ORS 174.010, which preclude interpretations that insert or delete words. *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government’s interpretation of its own land use laws to allow the planning commission complete discretion to grant an unlimited number of one-year permit approval extensions will not be affirmed under ORS 197.829(1), where the local government’s interpretation adds language that is not present in the local land use law, and the interpretation defeats the purpose of the local land use law, which is to limit the life of a permit decision that is not acted on. *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. Land use regulations that simply require that permit applications comply with “applicable” provisions in the land use regulations are frequently ambiguous, since they require an unguided review of the land use regulations to determine which provisions are “applicable.” *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. The applicability of a local government’s land use regulations, viewed in isolation, may be unambiguous. However, when those same land use regulations are viewed in context with others parts of the local government’s land use regulations, the applicability of those land use regulations may be qualified or limited. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government misinterprets an ordinance that implements the OAR 660-023-0090(8) safe harbor provision that allows alterations to occupy up to 50 percent of the “width” of certain riparian corridors to mean alterations that take up less than 50 percent of the entire riparian area are permitted. The proper interpretation is that alterations may only occur within the 50 percent of the riparian corridor farthest from the river. *ODFW v. Josephine County*, 59 Or LUBA 174 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a code provision prohibits development approval for property that is not in full compliance with all code requirements and prior approvals, unless the approval results in the property coming into full compliance, a hearings officer does not err in interpreting the code to require the applicant to apply for all permits and approvals necessary to correct all code or permit violations as part of the development application, and to reject as insufficient

the applicant's willingness to seek future permit approvals. *Reeder v. Multnomah County*, 59 Or LUBA 240 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. A street connectivity standard that requires that development must “include street connections to any streets that abut, are adjacent to, or terminate at the development site” is not correctly interpreted to allow a development proposal that would extend an abutting street a short distance into the development and then terminate the street without connecting it to an adjoining street. *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings official does not err by finding that a street connectivity standard that requires that development street systems not create “excessive travel lengths” is violated by a subdivision proposal that will result in eleven existing residents and the residents of three of the proposed lots having to drive one quarter of a mile out of direction to make certain trips. While the hearings official likely could have adopted a more permissive reading of the standard, it was not error to adopt the strict interpretation that the hearings official adopted. *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will remand a decision determining that a conditional use is inconsistent with one of seven purposes of the underlying zone, where it is not clear whether the county must address each of the seven purposes and determine whether the proposed use is, on balance consistent with those purposes, or whether inconsistency with a single zone purpose is sufficient to deny the application, and the county's decision does not address the issue. *Davis v. Polk County*, 58 Or LUBA 1 (2008).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government does not misconstrue its ordinance when it interprets the term “contiguous” to mean lands adjacent to and within 2000 feet of the subject property. *Hermanson v. Lane County*, 56 Or LUBA 433 (2008).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government does not err in determining that a holder of an option to purchase property is not an “owner” for purposes of the local code definition of owner where the definition restricts owners to legal title holders or entities purchasing property under a written contract. *Vilks v. Jackson County*, 56 Or LUBA 451 (2008).

1.1.1 Administrative Law – Interpretation of Law – Generally. A code provision allowing a “property owner” to request a declaratory ruling related “to the use of the owner's property” does not permit a neighborhood association to request a declaratory ruling related to the use of property that the association does not own. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. Remand is necessary where entitlement to initiate a declaratory ruling request rests on whether the applicant is

the “permit holder,” use of the subject property was arguably authorized by a number of different permits, and the hearings officer rejected a neighborhood’s association’s claim to be a “permit holder” without determining which permits are at issue and which persons hold those permits. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. Interpretations of a local code provision offered for the first time in a response brief at LUBA are not interpretations made by the local government. *Munkhoff v. City of Cascade Locks*, 54 Or LUBA 660 (2007).

1.1.1 Administrative Law - Interpretation of Law - Generally. Under *Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001), *adhered to as modified* 179 Or App 409, 40 P3d 532 (2002), if directly applicable legislation expressly requires that an analysis of existing lots or parcels must be limited to an analysis of *legally created* lots or parcels, then it follows that only lawfully created lots or parcels can be considered. However, even if the directly applicable legislation does not expressly require that lots or parcels have been legally created, that requirement may be found in related enactments and the legislative context in which the directly applicable legislation appears. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. When the local code requires a comparison to densities suggested in the comprehensive plan but the decision does not address any suggested densities, remand is necessary to determine if the comprehensive plan includes any suggested densities and, if so, either address them or explain why they need not be addressed. *Coquille Citizens for Resp. Growth v. City of Coquille*, 53 Or LUBA 186 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. When a code provision regarding riparian corridors could plausibly be required to be satisfied at the stage of the challenged decision or at a later stage, the issue was raised below, and the decision does not address the issue, the decision must be remanded for the local government to address the issue. *Coquille Citizens for Resp. Growth v. City of Coquille*, 53 Or LUBA 186 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. When a local government imposes a condition of approval based on a code provision regarding excessive demand created by a proposed development, but the local government does not find that the proposed development will cause excessive demand, ignores the developer’s proposed interpretation of excessive demand, and does not provide its own interpretation, the decision must be remanded. *PacWest II, Inc. v. City of Madras*, 53 Or LUBA 241 (2007).

1.1.1 Administrative Law - Interpretation of Law - Generally. Where the text of a city’s development code only requires that the city not provide certain services in the absence of an annexation agreement, the city’s interpretation of its code to allow it to require an annexation agreement at the time of partition approval, while not required by

the text of the development code, is not inconsistent with the text of the development code. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (2007).

1.1.1 Administrative Law - Interpretation of Law - Generally. A city's interpretation of a development code provision to allow it to require execution of an annexation agreement at the time of partition, rather than waiting until the property is developed, is consistent with contextual development code provisions that require annexation agreements at the time of partition approval without regard to whether development is proposed at the time of partition approval. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (2007).

1.1.1 Administrative Law - Interpretation of Law - Generally. A county does not err by interpreting a development code approval criterion that requires that proposed uses must be shown to be compatible with surrounding uses to require consideration of only the existing surrounding uses and not potential future uses. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

1.1.1 Administrative Law - Interpretation of Law - Generally. A county does not err by interpreting a development code compatibility standard for the first time in its written decision, where the interpretation was not beyond the range of interpretations that could reasonably have been anticipated during the evidentiary phase of the county's proceedings, and petitioners do not demonstrate (1) that there is specific evidence that they could present that differs in substance from the evidence that they already submitted or (2) that the new evidence is directly responsive to the county's interpretation. *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998). *Clark v. Coos County*, 53 Or LUBA 325 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. Even assuming a local government must evaluate the combined effect of multiple misstatements in the application that individually are immaterial, in determining whether to refer a revocation request to a hearing, where the alleged misstatements of fact have no relation to each other, there can be a “combined effect” to evaluate. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county's interpretation that a comprehensive plan policy, which implements Statewide Planning Goal 18 (Beaches and Dunes) and provides criteria for a determination whether development is appropriate in a beaches and dunes area, requires the county to address only adverse geologic or geotechnical impacts and not general development issues, is consistent with the text and context of the policy and the goal. *Borton v. Coos County*, 52 Or LUBA 46 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county's interpretation that a comprehensive plan policy, which implements Statewide Planning Goal 7 (Natural Disasters and Hazards), requires regulation of development in known areas potentially subject to natural disasters and is aimed at reducing risks to life and

property that are *caused by natural hazards*, is not applicable in the context of a determination whether development is appropriate in a beaches and dunes area, pursuant to a comprehensive plan policy that implements Statewide Planning Goal 18 (Beaches and Dunes), which is aimed at reducing impacts that may be *caused by the proposed development*. *Borton v. Coos County*, 52 Or LUBA 46 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county grading permit standard stating that grading activities “shall also occur pursuant to” the standards of the local sanitary sewer agency does not incorporate those standards into the code or require that the county determine whether the grading permit complies with the agency’s standards. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where no county approval was required to create parcels of more than 20 acres in a transitional timber zone if the parcel was to be used for forest use and the question is whether a parcel that was created 16 years ago was created for forest use, the fact that the parcel was used only for growing trees for 16 years is sufficient to show the parcel was created for forest use and it does not matter that no trees were harvested during that 16-year period. *Neal v. Clackamas County*, 52 Or LUBA 248 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. The broad statutory definition of “owner” under statutory lot-of-record provisions, which includes certain relatives of the fee title owner as the owner, does not apply in determining whether parcels are part of the same “tract” for purposes of approving a forest template dwelling. *Neal v. Clackamas County*, 52 Or LUBA 248 (2006).

1.1.1 Administrative Law - Interpretation of Law - Generally. As a general rule there is no reason why a local government could not interpret an “orderly development” land division criterion to impose a more stringent standard than Oregon Department of Transportation’s standard that the performance of failing intersections not be worsened by a proposal. However, where such an interpretation appears to be inconsistent with other city criteria and those apparent inconsistencies are not addressed in the decision maker’s findings, LUBA will reject the interpretation as incorrect. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government’s authority to interpret the scope and meaning of land use regulations adopted to implement statewide planning goals and administrative rules is constrained by ORS 197.829(1)(d), which requires LUBA to reverse an interpretation of a local regulation contrary to the goal, statute or rule it implements, notwithstanding the acknowledged status of that regulation. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 250 (1996), LUBA may apply ORS 197.829(1)(d) to review a local government’s interpretation of an acknowledged code provision that implements a statewide planning goal, statute or rule

only if the code provision is ambiguous. If the code provision is subject to more than one reasonable interpretation, one of which is consistent with the goal, statute or rule implemented, the local government cannot choose an interpretation that is inconsistent with the goal, statute or rule implemented. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local code fire siting standards require that secondary fuel breaks (*i.e.*, a fuel break extending 130 feet in all directions around structures) “or their equivalent” apply to new residences, the county does not err in determining that secondary fuel breaks are not required in the riparian setback area, where the findings adopted in support of the riparian vegetation setback regulations acknowledge that riparian vegetation provides a sufficient natural barrier against the spread of fire. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. The Oregon Laws 1987, chapter 737, section 3 standard requiring that property have “sewer and water lines paid for and installed by the property owner” is not correctly interpreted to require that the property have a “significant amount” of sewer and water lines paid for and installed by the property owner. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. The Oregon Laws 1987, chapter 737, section 3 standard requiring that property have “sewer and water lines paid for and installed by the property owner” is not correctly interpreted to require that the sewer and water lines also be installed off-site. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Oregon Laws 1987, chapter 737, section 3 does not unambiguously provide that lateral sewer and water lines may qualify as “sewer and water lines paid for and installed by the property owner” and thus satisfy one of the law’s requirements to qualify for protection from nonconsensual annexation. Therefore, resort to legislative history is appropriate. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. The Oregon Laws 1987, chapter 737, section 3 standard requiring that property have “sewer * * * lines paid for and installed by the property owner” is not satisfied where the property owner merely relocated sewer lines that were originally installed and paid for by a special district. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the definition of “home occupation” in the local code includes a business activity that is conducted in a *dwelling* or *accessory building* normally associated with the primary uses allowed in the underlying zone, a local government need not determine whether the proposed *business* is normally associated with the permitted uses allowed in the zone. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local noise standard applicable to home occupations provides that the proposed home occupation “shall not create noise that, when measured off the subject property, exceeds the greater of 60 dba or the ambient noise level,” the hearings officer errs in interpreting that provision to allow noise spikes in excess of 60 dba. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local home occupation standard prohibits external evidence of a home occupation, an interpretation of that standard that allows a vehicle related to the home occupation to traverse the subject property to access an accessory structure in which the vehicle will be stored is reasonable. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where access from a county road to a home occupation is obtained via a driveway located on the pole portion of the subject property, the county does not err in determining that a local standard requiring that “the subject property have frontage on, and direct access from, a constructed public, county or state road” is satisfied, notwithstanding that the driveway crosses an existing easement providing access to neighboring properties. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. When the approval criterion calls for a tree survey that “provides the location of all trees” of certain specifications, the local government may not use a one-acre sample to extrapolate for a 70-acre site without a showing that it is representative of the entire site. *Butte Conservancy v. City of Gresham*, 51 Or LUBA 194 (2006).

1.1.1 Administrative Law - Interpretation of Law - Generally. Where a city is required by the Metro Code to prepare and release a report prior to annexation that describes how the annexation is consistent with agreements that the city is not a party to, but the Metro Code review criteria that govern review of the annexation on appeal do not require that the annexation be consistent with agreements the city is not a party to, Metro may not deny the annexation ordinance based on the city’s failure to comply with the report requirement without explaining why that violation of the report requirements has the same status as a violation of one of the review criteria and provides a basis for denial. *City of Damascus v. Metro*, 51 Or LUBA 210 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Some caution is warranted in determining the intended scope of a term based on dictionary definitions, given the descriptive and all-inclusive nature of modern reference dictionaries. In many cases, the text and context of the code term may indicate that the governing body did not intend the term to encompass all possible dictionary meanings. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

1.1.1 Administrative Law - Interpretation of Law - Generally. Where a variance criterion requires the city to find that “public need” outweighs “adverse impacts” of developing wetlands and a party argues there is no market demand for the commercial development that the variance would allow, the city must address in its findings the role, if any, that market demand plays under the variance criterion and explain why the public need, as the city interprets those words, outweighs the identified potential adverse impacts. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. The legislature’s use of different terms to describe the actions required to have standing to appeal to LUBA is some indication that the legislature intended to impose different standing requirements. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. To have standing to appeal a post-acknowledgment plan amendment under ORS 197.620(1) an appellant must have “participated” during the local proceedings, whereas to have standing to appeal under ORS 197.830(2) an appellant must have “appeared.” The dictionary definitions of “participated” and “appeared” suggest more is required to participate than to appear, but those definitions do not identify what more is required. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A comprehensive plan policy that merely describes the county’s resource designations is not a mandatory tentative subdivision plan approval criterion, and the county was therefore not required to adopt findings addressing it. *Doob v. Josephine County*, 50 Or LUBA 209 (2005).

1.1.1 Administrative Law - Interpretation of Law - Generally. Where “tract,” “lot” and “parcel” are defined terms and a comprehensive plan policy uses the undefined term “ownership,” a county decision that applies that policy as though “ownership” meant the same thing as “lot” or “parcel” but does not explain why must be remanded so that the county can explain its interpretation of the undefined term. *Just v. Lane County*, 50 Or LUBA 399 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. A general code standard requiring streets to be improved with curbs and other facilities “if required” is not properly interpreted to require curbs for a private street, where the specific standards governing private streets do not require curbs. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where an interpretation of an ambiguous code standard that bars variances in some circumstances is needed to explain why the local government believes that standard did not bar an approved variance, and the appealed decision does not include either an express or implied interpretation of the code standard, remand is required. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although LUBA is authorized to interpret ambiguous local land use legislation in the first instance if the local government fails to adopt a needed interpretation, where interpreting the land use legislation in a way that would be consistent with the local government’s decision is problematic, LUBA will not attempt to interpret the legislation in the first instance. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. If a local government wishes to interpret and apply traditional variance standards differently than those standards have traditionally been interpreted and applied, it must articulate an interpretation of those standards that is sufficient for review. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government does not lose its inherent authority to interpret or reinterpret an ambiguous code provision in a quasi-judicial context when it decides to initiate a legislative code amendment process to resolve the code ambiguity. *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. While ORS 227.178(3), as interpreted in *Holland v. City of Cannon Beach*, 154 Or App 450, 926 P2d 701 (1998), prohibits a local government from changing its position with respect to the applicability of approval standards during the proceedings on a permit application, neither the statute nor *Holland* prohibit a local government from reinterpreting the meaning of indisputably applicable approval standards. *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

1.1.1 Administrative Law - Interpretation of Law - Generally. References in contextual laws that the Metropolitan Service District is to work cooperatively and use non-mandatory approaches in requiring action by cities and counties do not provide much assistance in determining whether a statute that specifically authorizes the Metropolitan Service District to require that city and county comprehensive plans and land use regulations be amended authorizes Metro to mandate such changes in a particular case. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

1.1.1 Administrative Law - Interpretation of Law - Generally. Express statutory authority for the Metropolitan Service District to take over local services if properly authorized to do so and to require changes in city and county land use regulations to address particular housing needs, patterns and practices of improper decision making does not necessarily mean that other statutes do not grant the Metropolitan Service District general authority to mandate changes in city and county land use regulations in other circumstances. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. A comprehensive plan citizen participation provision that requires appointment of a three-person citizens’ advisory committee when the planning commission is considering a major change to the

local government's land use regulations is not correctly interpreted to give the planning commission unlimited discretion in deciding what changes constitute major changes. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

1.1.1 Administrative Law - Interpretation of Law - Generally. A city code that requires planned development proposals to preserve trees “to the greatest degree possible” does not require that the applicant fundamentally change the nature of the application to maximize tree preservation. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

1.1.1 Administrative Law - Interpretation of Law - Generally. A city may not interpret a code exception for tree cutting permits to exempt a subdivision from a separate local code requirement for a tree protection plan, where the exemption for tree cutting permits has nothing to do with the separate tree protection plan requirement. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

1.1.1 Administrative Law - Interpretation of Law - Generally. A city does not err by interpreting a code requirement that 20% of the site for a planned development be landscaped to allow an applicant to include areas of the site that will be included in common open space and left in their natural state. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city council's conclusion that a tennis facility is accessory to residential use of a property is inconsistent with the text and context of its code, where the code defines an accessory use as uses incidental and subordinate to the primary use, and a city interpretation relies on the seasonal and nonprofit characteristics of the tennis facility and ignores other characteristics that demonstrate that the tennis facility is of much greater scale and intensity than the residential uses located on the property. *McCormick v. City of Baker City*, 46 Or LUBA 50 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code requirement that a house could only be allowed in a floodplain if “no alternative exists on the subject property which would allow the structure to be placed outside of the flood plain,” does not require that an applicant reconfigure the proposed house or reduce the size of its footprint to locate the house outside the floodplain. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a city decision that interprets a comprehensive plan community park policy to describe a type of park and not to impose approval criteria for particular park developments, where relevant plan policies describe four categories of parks within the city, but neither the plan nor the zoning code includes minimum standards for the development of parks. *Monogios and Co. v. City of Pendleton*, 46 Or LUBA 356 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the challenged decision does not explain why the area of large covered porches attached to approved dwellings was not included in calculating the maximum “buildable area,” and relevant code definitions suggest that such accessory structures are part of “buildings,” remand is necessary to interpret the code and determine whether such structures should be included in calculating the buildable area. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a county code defines “owner” to be the “legal owners(s) of record as shown on the tax rolls of the County,” an interpretation that the fee simple owners are not owners because the value of the fee ownership is minimal in comparison to the value of the easement that crosses that property is not sustainable. *Baker v. Washington County*, 46 Or LUBA 591 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a standard requires that a developer design a subdivision to “minimize” its impact on significant natural areas, and a hearings officer interprets that standard not to limit the developer to the minimum number of lots allowed in the zone, that interpretation is reasonable, where the text and context of the standard show that the “minimization” envisioned by the standard is modification to site design, and not to the number of lots in the development. *Neketin v. Washington County*, 45 Or LUBA 495 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. Local code requirements that a recreational use “shall not be the primary enterprise” of the property and that the recreational use must “be subordinate to the commercial agricultural operation in scope, scale and impact,” need not be interpreted to require that the commercial agricultural use generate more income than the recreational use. A county’s interpretation of those code requirements to necessitate comparison of the physical characteristics of the recreational use and the commercial farm use instead is not inconsistent with the language of the code. *Underhill v. Wasco County*, 45 Or LUBA 566 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer’s interpretation of a local code to conclude that a “wholesale nursery” is properly viewed as an “agricultural use” is consistent with the text of the code’s definition of “agricultural use,” where the term is expressly defined to include “horticultural use.” *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government interpretation that the subject property constitutes a “neighborhood” for the purpose of determining whether a proposed development is consistent with a plan policy that requires maintaining existing residential density levels within existing neighborhoods is not subject to deference under ORS 197.829(1) because it is inconsistent with the definition of “neighborhood” set out in the zoning ordinance and the dictionary definition of that term. *Roberts v. Clatsop County*, 44 Or LUBA 178 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government interpretation that defines “existing residential density levels” as the maximum density allowed in the most intensive residential zoning district within the neighborhood is inconsistent with the text and apparent purpose of a policy that requires the local government to maintain existing residential density levels in established neighborhoods, because it does not take into account the majority of the property in the neighborhood that is zoned and developed at substantially lower density levels. *Roberts v. Clatsop County*, 44 Or LUBA 178 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where LUBA and the Court of Appeals have already decided that local ordinance provisions require that an applicant for a lot line adjustment demonstrate that the proposed use of the property after the lot line adjustment is served by adequate public facilities and is compatible with comprehensive plan policies, a city may not interpret those same provisions in such a way as to relieve an applicant of that burden. *Robinson v. City of Silverton*, 44 Or LUBA 308 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city did not err in interpreting a local code criterion that requires that “walkways” connect to “areas of the site such as * * * adjacent streets” to require that petitioner deed an easement to the city for a sidewalk crossing in front of petitioner’s building through the center of its property in order to connect with adjacent streets on each side, where the city’s definition of “walkway” requires that walkways be “accessible to the public.” *Hallmark Inns v. City of Lake Oswego*, 44 Or LUBA 605 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local governing body’s interpretation of its ordinance to allow it to impose conditions of approval when a dwelling is approved through the county’s conditional use process, to address the impacts that the dwelling may have on big game habitat, is within the interpretive discretion afforded by ORS 197.829(1) and will be afforded deference by LUBA. *Botham v. Union County*, 43 Or LUBA 263 (2002).

1.1.1 Administrative Law – Interpretation of Law – Generally. The noise standard at OAR 340-034-0035(1)(b)(B) applies to a proposal to expand an existing aggregate mining site onto a neighboring property that has not been used for either industrial or commercial purposes within the 20-year period immediately preceding the application to mine the property. *Morse Bros., Inc. v. Linn County*, 42 Or LUBA 484.

1.1.1 Administrative Law – Interpretation of Law – Generally. The noise standard at OAR 340-034-0035(1)(b)(B) applies to a proposal to expand an existing aggregate mining site onto a neighboring property that has not been used for either industrial or commercial purposes within the 20-year period immediately preceding the application to mine the property. *Morse Bros., Inc. v. Linn County*, 42 Or LUBA 484.

1.1.1 Administrative Law – Interpretation of Law – Generally. A planning director’s interpretation that the base point from which a building height is calculated is established by determining the elevation of property after fill has been placed on the property is

correct where the context makes it clear that some manipulation of the elevation may be done so long as the fill has been placed pursuant to approved grading plans. *Tirumali v. City of Portland*, 41 Or LUBA 231 (2002).

1.1.1 Administrative Law – Interpretation of Law – Generally. A governing body’s interpretation of a local provision is adequate for review where its findings articulate or demonstrate the governing body’s understanding of the provision to a degree sufficient to resolve the issues raised in the petition for review. *Huff v. Clackamas County*, 40 Or LUBA 264 (2001).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a county ordinance requires that “major service activity areas” be “oriented away from existing dwellings,” it is reasonable and correct to interpret the ordinance to be satisfied by modification and conditions that direct impacts of service activities away from existing dwellings. *Knudsen v. Washington County*, 39 Or LUBA 492 (2001).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the first clause of a local code provision requires that design review comply with a set of criteria used to rezone property and the second clause requires that design review also comply with those criteria addressed at the time the subject property was rezoned, a hearings officer’s interpretation limiting design review to the subset of criteria addressed at the time the property was rezoned fails to give effect to the first clause of the code provision, and is therefore not reasonable and correct. *Blazer Construction, Inc. v. City of Eugene*, 36 Or LUBA 391 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government errs in declaring that an intergovernmental agreement no longer controls where by the terms of that agreement it governs until specified recommendations are implemented, and the record shows that the recommendations have been only partially implemented. *City of Salem/Marion County v. City of Keizer*, 36 Or LUBA 262 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. An interpretation of a zoning ordinance that shifts the burden of demonstrating compliance with minimum lot size approval standards to opponents of the application is erroneous. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a code provision requires an applicant for expansion of a golf course on EFU-zoned land to demonstrate that alternative urban sites are not available and an applicant applies to expand an existing golf course, a hearings officer’s interpretation of the provision as limiting the requisite alternative site analysis to locations where the existing golf course can expand is reasonable and correct. *DLCD v. Jackson County*, 36 Or LUBA 88 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city council’s implicit interpretation that a planning director’s letter is not an “action or ruling” that may be appealed to the planning commission is inadequate for review, when LUBA cannot

determine the legal basis for the city council's determination. *Schultz v. City of Forest Grove*, 35 Or LUBA 712 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. The term "farm use" as defined in ORS 215.203(2)(a) is not a "delegative term," and a county commits no error by failing to adopt county legislation to clarify the meaning in advance of making a decision about whether a particular use qualifies as a "farm use." *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. In determining whether a particular use qualifies as an "other agricultural or horticultural use," as that phrase is used in ORS 215.203(2)(a), there is no requirement that a county hearings officer develop a list of salient characteristics of such uses. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. A proposal to site a drug and alcohol recovery facility within a single-family dwelling in a residential zone must be permitted when the relevant code provision permits outright those activities that are conducted in buildings "designed or used for the occupancy of one family" and the proposed recovery facility is to be located in such a structure. *Recovery House VI v. City of Eugene*, 35 Or LUBA 419 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. A legislative enactment supersedes all of an administrative rule only if the enactment specifically and comprehensively contradicts all or nearly all of the critical components of an administrative rule. *Northwest Aggregates Co. v. City of Scappoose*, 35 Or LUBA 30 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 222.170(4) applies only to annexations conducted under ORS 222.170(1) and is not applicable to annexations conducted under ORS 222.125. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code requires that sewer facilities be "available" as a condition of approval for annexation, the local government's interpretation of the "available" criterion as being met where extension of sewer services is feasible within the current planning period is not clearly wrong. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA's analysis of a local government's interpretation of a local ordinance is not limited to the text and context of the provisions, but may also consider their purpose, and the effects thereon of a literal interpretation. *Recovery House VI v. City of Eugene*, 34 Or LUBA 486 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. A code requirement that each lot in a subdivision be approved with provisions for sewage disposal is

reasonably interpreted as not applying to lots that are not to be developed. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. There is no basis for applying the doctrine of unique circumstances to local land use decisions. If local regulations make failure to timely file an appeal a jurisdictional defect, LUBA has no authority to develop an equitable remedy that overcomes such a defect. *Mountain Gate Homeowners v. Washington County*, 34 Or LUBA 169 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. Amendments to ORS 197.830(6) that shorten the statutory deadline for filing a motion to intervene in a LUBA appeal impair the existing right to participate in an appeal. Thus, the statute applies prospectively in the absence of an expression of legislative intent to the contrary. *Gutoski v. Lane County*, 33 Or LUBA 866 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. Generally, where the legislature fails to express any intention concerning the retroactivity of a statute, the statute applies only prospectively if the statute will impair existing rights, create new obligations or impose additional duties with respect to past transactions. *Gutoski v. Lane County*, 33 Or LUBA 866 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although LUBA may interpret a local ordinance, it is not required to do so. *Opp v. City of Portland*, 33 Or LUBA 654 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where local code includes two different definitions of "campgrounds," a county decision approving a campground must address both definitions and determine whether one or both definitions apply and whether the proposed use complies with whatever definition applies. *Donnelly v. Curry County*, 33 Or LUBA 624 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. The text and context of ORS 215.750 establish that a governing body may impose standards in addition to those in ORS 215.750. *Evans v. Multnomah County*, 33 Or LUBA 555 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. While LUBA does not formally defer to agency interpretations, it may properly look to agency interpretations for guidance in interpreting agency rules. *DLCD v. Jackson County*, 33 Or LUBA 302 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. The word "shall," used in a regulation, expresses what is mandatory. A local government interpretation to the contrary is indefensible and will not be affirmed by LUBA. *DLCD v. Tillamook County*, 33 Or LUBA 163 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.705 precisely states comprehensive criteria that govern when a lot-of-record dwelling may be allowed. Under ORS 183.400 and ORS 215.304(3), OAR 660-33-020(4) cannot be interpreted to prohibit what the statute otherwise allows. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.705 cannot be interpreted or supplemented by LCDC rule to provide that the reconfiguration of a tract through the sale of one or more lots extinguishes the right to build a dwelling on at least one of the lots of record within the original tract. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. Lot-of-record provisions should be interpreted as limited in their application to property owners who had a reasonable expectation in 1985 of a right to build a home. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. The term "present owner," as it is used in ORS 215.705(1)(a), refers to a land sale contract vendee, not a land sale contract vendor. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. The word "owner," as it is used in ORS 215.705, is not defined, and when applied to land generally, has no fixed and inflexible meaning. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. A requirement that a *significant* amount of firearms training occur at a firearms training facility is not demanding enough under OAR 660-06-025(4)(m), because it places no limitation on other activities not directly related to or justified by firearms training. *J.C. Reeves Corp. v. Washington County*, 31 Or LUBA 115 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will not defer to the opinion of an agency official, given informally after the adoption of an administrative rule, as to the meaning of that rule. *J.C. Reeves Corp. v. Washington County*, 31 Or LUBA 115 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. A zoning ordinance provision that states land use districts may "float" within the boundaries of a proposed planned development can be interpreted to mean that such districts may be dissolved and totally reconfigured, with densities reallocated. *Huntzicker v. Washington County*, 30 Or LUBA 397 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.829(2) permits LUBA, in cases where a local government fails to interpret adequately a provision of its land use regulations, to make its own determination of whether the local government decision is correct. *Thompson v. City of St. Helens*, 30 Or LUBA 339 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. A comprehensive plan policy that does not set out approval criteria for a land use permit decision may nevertheless state an underlying purpose or policy with which the county's interpretation of its zoning ordinance must be consistent. *DLCD v. Tillamook County*, 30 Or LUBA 221 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although ORS 197.829(2) allows LUBA, in certain circumstances, to interpret a local ordinance to the extent necessary to determine whether a local land use decision is correct, it is still the local government's responsibility to interpret its own comprehensive plan and land use regulations in the first instance, and LUBA is not required to do so. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.835(9)(b) and 197.829(2) authorize LUBA to remedy minor oversights and imperfections in local government land use decisions, but do not permit or require LUBA to assume the responsibilities assigned to local governments, such as the weighing of evidence, the preparation of adequate findings and the interpretation of comprehensive plans and local land use regulations. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. When petitioners fail to satisfy the county's jurisdictional appeal provision requiring local appellants to state the basis of their standing, the county is not at liberty to take notice of petitioners' standing or to excuse their failure satisfy the requirement as "harmless error." *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. When a county zoning ordinance provision states that a local appeal will be dismissed if the requirements of the provision are not satisfied, the provision is jurisdictional. An appellant's failure to satisfy a jurisdictional requirement results in dismissal of the appeal. *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. Code demolition permit pre-application requirements that the owner of historic property "endeavor to prepare an economically feasible plan" for preservation and "solicit purchase offers" must be interpreted in light of other code demolition permit provisions which clearly leave the decision to sell or not sell the historic property up to the property owner. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government's zoning ordinance establishes a process for administrative actions to determine the existence of nonconforming uses, and another local ordinance gives a compliance hearings officer jurisdiction over complaints regarding violations of the zoning ordinance, it is reasonable and correct to interpret these ordinances to require that the existence of a nonconforming use be determined through an administrative action, not

raised as a defense in a compliance proceeding. *Watson v. Clackamas County*, 28 Or LUBA 602 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code requires that a second farm dwelling be shown "conclusively" to be "necessary for the operation of the commercial farm," but does not define the term necessary, it is appropriate to use the dictionary definition of the term "necessary." *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA assigns no particular weight to a post-enactment statement by an agency administrator concerning the meaning of an administrative rule. *Sensible Transportation v. Washington County*, 28 Or LUBA 375 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Documents prepared during the proceeding leading to the adoption of an administrative rule are legitimate administrative history which LUBA may consider in interpreting the administrative rule. *Sensible Transportation v. Washington County*, 28 Or LUBA 375 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local code defines the term "feedlot" to involve animals that are prepared for shipment to "market," it is neither reasonable nor correct to interpret "market" to mean only the "final" market to which the animals are shipped. *Derry v. Douglas County*, 28 Or LUBA 212 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county does not err by interpreting a local code provision allowing "commercial or processing activities that are in conjunction with timber and farm uses," in a rural residential zone, in the same way the Oregon Supreme Court has interpreted similar language in the exclusive farm use zoning statutes. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer correctly construes a local code provision allowing "commercial or processing activities that are in conjunction with timber and farm uses" in the relevant rural area to require that a landscaping business's sales and purchases be primarily to customers and from suppliers that constitute timber or farm uses in the relevant rural area. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the term "farm use" is defined in a rural residential zone to include noncommercial farms, and it appears from the challenged decision that the hearings officer may not have considered noncommercial farms in determining whether a landscaping business qualifies as a commercial or processing activity "in conjunction with timber and farm uses," the decision will be remanded. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government decision amending its land use regulations does not interpret comprehensive

plan goals and map designations as being inapplicable to such amendments, but rather explains how the proposed amendment implements certain comprehensive plan goals and is consistent with certain plan map designations, it is clear the governing body interprets those plan goals and map designations as being applicable to the land use regulation amendment. *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.307(5)(d) expresses an alternative standard that is satisfied if the exterior materials of a manufactured home *either* (1) are similar those commonly used on dwellings in the community, *or* (2) are comparable to those used on surrounding dwellings. Because local governments cannot adopt standards more restrictive than those set out in ORS 197.307(5), a city cannot interpret a local regulation implementing ORS 197.307(5)(d) as allowing it to require, in a particular instance, that a manufactured home *must* satisfy the second alternative. *Brewster v. City of Keizer*, 27 Or LUBA 432 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.316(1) (1993) expresses a legislative intent to retroactively prohibit counties from designating resource lands as marginal lands, and from adopting plan and code provisions allowing additional nonresource uses on such marginal lands, after January 1, 1993. ORS 215.316(1) (1993) does not express an intent to retroactively prohibit counties that have *not* designated marginal lands from applying either ORS 215.283 (1991) or the supposedly stricter provisions of 215.213(1) to (3) (1991) to their exclusive farm use zones. *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under ORS 197.829, LUBA is required to defer to a local government's interpretation of its own enactments, unless the local interpretation is contrary to the express words, purpose or policy of the enactment, or is inconsistent with a statute, goal or rule that the enactment implements. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. The comprehensive plan provisions comprising a city's urban growth management program are clearly designed to implement Statewide Planning Goals 11 and 14. Therefore, a city errs in interpreting such plan provisions to allow the extension of urban sewage treatment service outside an urban growth boundary. *DLCD v. City of Donald*, 27 Or LUBA 208 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a code provision requires that effects on an area's "appearance and function" be determined based specifically on factors set out in that provision, a local government may interpret the code provision to be satisfied by a determination based solely on those factors, even if the code also provides that words have their "normal dictionary meaning," and the dictionary definitions of "appearance" and "function" suggest additional factors are relevant. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.829(1), (2) and (3) essentially codify the standard of review imposed by *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). ORS 197.829(4) limits or qualifies the *Clark* standard of review in certain circumstances. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government interpretation of one of its forest zones in a manner that would permit asphalt batch plants to operate permanently, so long as there were periodic interruptions, does not conflict with the Goal 4 rule, which envisions both permanent and temporary asphalt batch plants. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Absent some specific indication of contrary intent, terms are read consistently throughout a statute. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where an exclusive farm use zone does not allow asphalt batch plants or their accessory uses, and petitioner contends the county erred by permitting a private access road across exclusive farm used zoned property to serve an asphalt batch plant, the county must respond in its decision to that interpretive question. Where the county fails to do so and simply concludes such roads are allowable, the decision must be remanded so that the county can adopt an interpretive response adequate for LUBA review. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county surface mining ordinance that retains several operating and reclamation standards from the prior surface mining ordinance did not "repeal" the prior ordinance, because the new ordinance does not "supersede all material particulars" of the prior ordinance. *Oregon City Leasing, Inc. v. Columbia County*, 26 Or LUBA 203 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government has not adopted traditional, strict variance standards, it may interpret a variance approval standard requiring a variance to be "the minimum variance necessary to make reasonable use of the property" as requiring that (1) the proposed use be a reasonable use of the subject property, and (2) the requested variance be the minimum necessary to allow the proposed use. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government cannot simply conclude its failure to list shopping centers as a permitted or conditional use in any existing zoning district creates an ambiguity and, on that basis, determine it will allow shopping centers as a conditional use in a particular zoning district. Such an action constitutes improperly amending the zoning ordinance in the guise of interpreting it. *Loud v. City of Cottage Grove*, 26 Or LUBA 152 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under ORS 215.448(1)(c), home occupations may not be conducted outside the dwelling and other buildings normally associated with permitted uses in the zone. ORS 215.448(1)(c) does not provide for a *de minimis* exception to that requirement. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code provision requiring that "consideration * * * be given to [certain specified] factors" does not establish mandatory approval standards for local government decisions, but rather merely lists "factors" which the local government must consider. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA must defer to a local government's interpretation of its own land use regulations unless the interpretation is clearly wrong. A county interpretation that a facility for an annual equestrian event qualifies as a "rodeo" or a "livestock arena" is not clearly wrong. *Cooley v. Deschutes County*, 25 Or LUBA 350 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA is not bound by legal precedents established by circuit court decisions in unrelated cases. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local code requires that the subject property be reasonably suited for the "use proposed," a local government does not err by determining the suitability of the entire parcel for the proposed use and not just the site of the proposed residence. *Clarke v. City of Hillsboro*, 25 Or LUBA 195 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government interpretation of a local code provision which prohibits direct access to major collectors by commercial, industrial and institutional uses with more than 150 feet of frontage as not applying to proposed residential subdivisions with more than 150 feet of frontage is reasonable. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government may interpret the term "processing of aggregate," as used in an industrial zoning district of its code, to include asphalt plants, even though the code language was adopted at a time when LUBA had interpreted similar language in the EFU statute not to include asphalt plants. *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. While a local government is not obliged to respond to a taking claim raised during the local proceedings, the local government should, in the first instance, have an opportunity to respond to a taking issue during the local proceedings. Where there is more than one possible interpretation of the local approval standards, the local government should have

the opportunity to adopt an interpretation that is constitutional. *Larson v. Multnomah County*, 25 Or LUBA 18 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A requirement in a local code that development be "consistent" with comprehensive plan policies and standards, is a general requirement that does not transform otherwise nonmandatory plan standards into approval standards. *McGowan v. City of Eugene*, 24 Or LUBA 540 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. While a local government is not *obliged* to respond to a taking claim raised during the local proceedings, the local government should, in the first instance, have an opportunity to respond to a taking issue during the local proceedings. Where there is more than one possible interpretation of the local approval standards, the local government should at least have the opportunity, if possible, to adopt an interpretation that is constitutional. *Larson v. Multnomah County*, 24 Or LUBA 629 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. It is clearly contrary to the express terms of a local ordinance standard requiring a determination that "the type of farm products produced on the applicant's farm" be unrepresented within a particular area, to determine the standard is satisfied by a showing that there are no similar farm management methodologies employed on farms in the designated area. *Giesy v. Benton County*, 24 Or LUBA 328 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. That area farms produce either purebred cattle or sheep, rather than a combination of purebred cattle and sheep, is not a basis for determining there are no similar farm products produced in the designated area. *Giesy v. Benton County*, 24 Or LUBA 328 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a "substantial construction" standard in a local code is clear enough for an applicant to know what he must show during the application process, such a standard is not impermissibly vague. *Columbia River Television v. Multnomah County*, 24 Or LUBA 82 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. In evaluating the compliance of an application for a conditional use permit for a bed and breakfast with a local traffic impacts approval standard, it is proper to evaluate the impacts of a reasonable residential use of the dwelling, together with the proposed bed and breakfast use. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local code lists uses as conditionally permitted, such listing does not, of itself, imply that the local government must approve all applications for conditional uses or that it is limited to the imposition of conditions of approval. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Subsequent changes in county ordinances do not affect an energy facility for which a site certificate has been

approved by EFSC. Under ORS 469.400(5), a county is required to issue the "appropriate permits" for such an energy facility, regardless of whether a subsequent change in county ordinances makes the "appropriate permit" a type different from that which was appropriate when the site certificate was approved. *McDole v. Lane County*, 23 Or LUBA 500 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the maximum penalty for each separate violation of an ordinance is 500 dollars, and there is no possibility of imprisonment for violating the ordinance, the penalties provided by the ordinance are civil, not criminal, in nature. Therefore, a vagueness challenge based solely on the constitutional vagueness analysis applied where criminal sanctions are possible, provides no basis for reversal or remand of such ordinance. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local ordinance that prohibits the short term rental use of dwellings in residential zones is not an unlawful rent control regulation under ORS 91.225. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code jurisdictional requirement that the local appeal document, which under the code includes the required appeal fee, be "signed" but which does not state *where* such signature must be located, is satisfied by the local appellant's signature on his personal check submitted as the filing fee. *Breivogel v. Washington County*, 23 Or LUBA 143 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. The language in ORS 197.247(1)(a) that "[t]he proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983 * * *" applies to forest as well as farm operations. *DLCD v. Lane County*, 23 Or LUBA 33 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government elects to limit the length of cul-de-sac streets, it may also establish how the length of such streets is to be measured. However, where no particular method of measuring the length of cul-de-sac streets is specified in its land use regulations, the local government must determine length applying the regulations as they are written and applying the plain and ordinary meaning of the operative term "length." *Sully v. City of Ashland*, 23 Or LUBA 25 (1992).