

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. 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).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. 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).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The inference described in *Sarti v. City of Lake Oswego*, 20 Or LUBA 387, *rev’d* 106 Or App 594, 809 P2d 701 (1991)—that provision for a specific listed use in one zone precludes that use from being authorized in a different zone under a broader use category—has no role in reviewing local government code interpretations under ORS 197.829(1), where the proper question is whether the interpretation is consistent with the text and context of the code language. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. 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).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. 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).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. 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).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. 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).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local governing body’s interpretation of its land use regulations to limit the scope of review of a site plan and architectural review committee is inconsistent with the text of the land use regulations where the governing body ignores and fails to give effect to land use regulation text that is inconsistent with its interpretation. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local government’s interpretation of its land use regulations to limit application of (1) its land use regulation’s requirement for preparation of a transportation impact analysis and (2) its minimum level of service standard to zone change decisions and certain planned unit development decisions cannot be sustained, where the text of the relevant land use regulation sections is inconsistent with that interpretation. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a comprehensive plan in one instance says the city’s level of service standard applies to zone changes, but does not state that the standard applies *exclusively* to zone changes, and in another instance the comprehensive plan states that the level of service standard applies when changing land use designations and to development, the comprehensive plan text does not support the city’s ultimate interpretation that the level of service standard applies only to zone changes. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local ordinance providing that use of a verb in the present tense includes the future tense is not controlling where the disputed term is used as an adjective that does not convey a tense or refer to a past completed action. *Paddock v. City of Lafayette*, 58 Or LUBA 498 (2009).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When an applicable local provision requires that road improvements associated with a partition be constructed or bonded for “before a dwelling may be authorized,” the local governments

errs by requiring the improvements to be constructed or bonded for as a condition of approval of the partition itself. *Sperber v. Coos County*, 58 Or LUBA 570 (2009).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a county attempts to take advantage of the riparian corridor safe harbor authorized by OAR 660-023-0090(8) but defines “water dependent” and “water related” slightly differently than the statewide planning goal definitions of those terms, any ambiguity created by the different wording must be resolved consistently with the statewide planning goal definitions. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Exclusive farm use and forest zoned lands are subject to statutory minimum parcel sizes. A generally applicable zoning ordinance definition of “lot size” that would allow internal rights of way to be included in computing lot size is not necessarily inconsistent with the statutory minimum parcel size requirements where the statutes are silent about how to treat internal rights of way. If it turns out that internal rights of way must be excluded when applying statutory minimum parcel size requirements in exclusive farm use and forest zoned lands, the statutory requirement would have to be satisfied notwithstanding the general zoning ordinance definition. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Under ORS 197.445(4), destination resorts must provide at least 150 units of “overnight lodging.” Where a zoning ordinance that was adopted to implement ORS 197.445(4) is ambiguous, such that the zoning ordinance could be interpreted to be inconsistent with ORS 197.445(4) or consistent with ORS 197.445(4), the county would be required to interpret the zoning ordinance to be consistent with ORS 197.445(4). *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. ORS 197.445(5) limits commercial uses to “types and levels of use necessary to meet the needs of visitors” to destination resorts. A zoning ordinance that allows “commercial and entertainment” uses in destination resorts is likely consistent with ORS 197.445(5) since entertainment uses are likely to be commercial uses. But if an entertainment use were proposed that was not a commercial use, the county would be obligated to interpret the term entertainment consistently with ORS 197.445(5) and deny the proposed entertainment use. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a zoning ordinance amendment that potentially allowed more individual lots or units in a destination resort than permitted under applicable statutes at the time the zoning ordinance amendment was adopted, the decision need not be remanded where the statute was subsequently amended to allow the number of individual lots or units authorized by the zoning ordinance amendment. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. ORS 197.445(1) requires a minimum site size of 160 acres for destination resorts. A zoning ordinance that allows internal rights of way to be included in determining whether a proposed destination resort complies with the ORS 197.445(1) 160-acre minimum site size does not violate the statute, because ORS 197.445(1) does not expressly require that rights of way be excluded when computing site size and even if the statute did require that rights of way be excluded, the statutory requirement would have to be satisfied. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The purpose of a zoning limitation that commercial development in a specified area should consist of “retail that is small in scale” could be to limit floor space area and it could also be to require that commercial uses have “a small or local market area.” *Loprinzi’s Gym v. City of Portland*, 56 Or LUBA 358 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where zoning ordinance commentary states that the purpose of a zoning ordinance limitation is to encourage “a local scale of retail,” and encourage businesses that are “local serving rather than providing a regional draw,” a city does not err in finding that the purpose of a zoning regulation that limits commercial uses to 10,000 square feet is to encourage locally oriented businesses rather than businesses of any particular size. *Loprinzi’s Gym v. City of Portland*, 56 Or LUBA 358 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Findings in support of an adjustment to a 10,000 square foot maximum floor space limit to allow a 33,000 square foot health club are inadequate to demonstrate that granting the adjustment will “equally or better” meet the purpose of the adjusted regulation, where the purpose of the adjusted regulation is to assure the resulting business is “locally serving” and the findings offer no working explanation of what the city thinks “locally serving” means and the findings do not address the “equally or better” requirement at all. *Loprinzi’s Gym v. City of Portland*, 56 Or LUBA 358 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A zoning ordinance provision that simply says duplexes and triplexes may be allowed through a Type I (nondiscretionary) procedure if certain specified nondiscretionary standards are met is not properly interpreted to render inapplicable other apparently applicable nondiscretionary approval criteria. *Tallman v. City of Bend*, 56 Or LUBA 398 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A checklist prepared by a city’s planning department to identify which criteria apply when approving a duplex or triplex does not render apparently applicable zoning criteria that are not identified on the checklist inapplicable to an application for approval of a duplex. It is the zoning ordinance that determines which standards apply, not the checklist. *Tallman v. City of Bend*, 56 Or LUBA 398 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When a local code provision prevents the filing of the same or “substantially similar” application within a certain time period after a previous application is denied, the plain ordinary meaning of “substantially similar” means that a second application is barred only when there is a high degree of similarity. *Henkel v. Clackamas County*, 56 Or LUBA 495 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a hearings official interprets a street connectivity standard to include a balancing test where the city would determine whether wetland values should take “precedence over the connectivity standards” or whether “it is more appropriate to meet the connectivity standards than to preserve wetlands,” but the street connectivity standards themselves provide no textual support for that interpretation, LUBA will remand for a correct interpretation and application of the street connectivity standards. *GloryBee Foods, Inc. v. City of Eugene*, 56 Or LUBA 729 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a text and context analysis does not clearly answer an interpretive question, under *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993), it is appropriate to consider legislative history and maxims of statutory construction. Where there is no legislative history or relevant maxim of statutory construction, and the interpretive question therefore turns on which of several dictionary meanings of the term “preclude” should apply, LUBA will remand for the hearings officer to select the appropriate dictionary definition, considering other parts of the ambiguous zoning ordinance standard and other relevant context. *GloryBee Foods, Inc. v. City of Eugene*, 56 Or LUBA 729 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. To resolve conflicts between statutes, courts apply the legislative presumption that the more specific statute prevails over the more general statute, and may also apply a similar maxim of statutory construction, that where a conflict between two statutes cannot be reconciled, the later adopted statute prevails over the earlier statute. *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. In circumstances where the goal-post statute at ORS 215.427(3)(a) conflicts with Ballot Measure 37 (ORS 197.352), the latter prevails, because ORS 197.352 is the more specific and later-adopted statute. *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A comprehensive plan policy that uses the word “should” is generally not a mandatory approval criterion. *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. Where a zoning ordinance allows “roadside stands,” that sell “agricultural produce,” a land use hearings officer correctly applies the *PGE v. Bureau of Labor and Industries*, 317 Or

606, 610-12, 859 P2d 1143 (1993) template and the county zoning ordinance by applying dictionary definitions of “agricultural” and “produce” to conclude that a roadside stand may not include an espresso cart. The hearings officer correctly concluded from those definitions that while coffee beans are agricultural produce, espresso coffee drinks are not. *Collver v. Lane County*, 54 Or LUBA 147 (2007).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local government misconstrues its code when it finds that an ambiguity in the exhibits to an ordinance creates an inconsistency between the ordinance and the official zoning map. *Brown v. Lane County*, 54 Or LUBA 281 (2007).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When a land development ordinance requires multi-stage approvals and imposes time limits for securing approvals and filing additional applications, but does not suspend the time limits if individual stage approval decisions are appealed, a local government misinterprets its land development ordinance by introducing the concept of “initial” and “final” approval decisions for each stage to extend the deadlines for filing subsequent applications and securing subsequent stage approvals. *Foland v. Jackson County*, 54 Or LUBA 287 (2007).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. 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).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. 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).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. As part of the textual analysis under *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993), Oregon courts apply a grammatical rule or presumption that modifying words or phrases refer only to the “last antecedent,” the last preceding word, phrase or clause, and not earlier words or phrases in the sentence, where no contrary intent appears. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The purpose statement to a land use regulation is both context for interpreting that regulation as well as an explicit statement of its purpose. LUBA will reverse a governing body’s interpretation of the regulation to allows residential uses that are prohibited by and

therefore inconsistent with the purpose statement. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the purpose of an overlay zone is to allow non-recreational uses only when they are related to or support recreational uses, under ORS 197.829(1)(b) LUBA will reverse a governing body’s interpretation that the zone allows unrestricted non-recreational uses regardless of whether those uses are related to or support recreational uses. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A hearings officer does not err in determining that specific provisions governing property line adjustments of undersize lots in agricultural zones apply to an agriculturally zoned portion of a split-zoned parcel, rather than general provisions governing property line adjustments requiring that adjusted lots satisfy the minimum parcel size. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A code standard prohibiting a property line adjustment on agricultural land where the adjustment is used to qualify a lot or parcel for the siting of a dwelling does not preclude an adjustment that would effectively separate a split-zoned parcel to allow residential development on the non-agriculturally-zoned portion of the parcel, where the adjustment will not qualify the agricultural portion of the parcel for a dwelling. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. 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).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local government misconstrues its local code when it interprets the word “ownerships” to have different meanings in different parts of the code. *Brown v. Lane County*, 51 Or LUBA 689 (2006).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the text of an ordinance clearly demonstrates an intent not to rezone a particular area, but an attached map shows the area as rezoned, the text controls over the map. *Flying J. Inc. v. Marion County*, 49 Or LUBA 28 (2005).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a city’s Master Plan Development District simply allows the uses that are permitted in certain other districts, the city erroneously interprets its code to allow those uses without the minimum lot size, minimum lot width, limit on building coverage, front or rear

setback requirements or building height or any other standards or regulations that are applied to those uses in the other zoning districts. Those limitations from the other zoning districts apply unless the city applies the Master Plan Development District provision that allows the city to apply alternative standards in certain circumstances. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Because ORS 215.130(11) does not unambiguously prohibit a county from requiring proof that a use was a lawful use when it came into existence more than 20 years ago or that it existed when the land use laws changed to prohibit the use, it is appropriate to consider legislative history of that statute. *Aguilar v. Washington County*, 49 Or LUBA 364 (2005).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The legislative history of ORS 215.130(11) makes clear that the statute operates to apply a 20-year proof limitation to any requirement of proof of existence as an element of continuity but it does not apply the 20-proof limitation to any requirement of proof of existence, as an element of lawfulness at the time the use became nonconforming. *Aguilar v. Washington County*, 49 Or LUBA 364 (2005).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the text of a particular zoning district that allows permitted uses to be reviewed as conditional uses seems to call for a focus on the characteristics of the use itself, but the conditional use chapter of the zoning ordinance expressly provides that conditional uses may require special consideration due to unique site characteristics, the city does not err in interpreting the zoning district text to allow it to consider whether unique site characteristics justify treating the permitted use as a conditional use. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a local government approves a convention center, which is not listed as a permitted use in the applicable zone, but the use is expressly listed in another zone, the local government must address that “context” and explain how that context supports its conclusion that convention centers are allowed in the zone where they are not specifically listed. *O’Shea v. City of Bend*, 49 Or LUBA 498 (2005).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a regulation specifically authorizes a use in one zone and does not authorize that specific use in a second zone, a more general authorization of uses in the second zone should not be interpreted to include the more specifically authorized use in the first zone. However, that principle would not apply to bar finding a particular feedlot qualifies as a “farm use” rather than a “commercial activity * * * in conjunction with farm use,” where the legislature’s authorization of “commercial activities that are in conjunction with farm use” is no more specific than its authorization of “farm uses.” *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will exercise its discretion under ORS 197.829(2) to interpret a comprehensive plan policy governing commercial zones to be inapplicable to a zone change to an industrial zone, notwithstanding that the proposed use is a commercial use, where the local government interpreted several similar plan policies to be inapplicable, and the context of the plan policy indicates that commercial uses in industrial zones are governed by industrial, not commercial, plan policies. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. A county interpretation of its zoning ordinance to allow an existing manufactured dwelling to remain connected to the septic system that serves that existing dwelling, rather than to require the manufactured dwelling to be moved and connected to the septic system for the other dwelling on the property where the medical hardship is located is not inconsistent with the underlying purpose for medical hardship dwellings. In either case a second dwelling remains on the property for a specified period of time. *Burton v. Polk County*, 48 Or LUBA 440 (2005).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. In construing an initiative, a court attempts to discern the intent of the voters, based foremost on text and context of the initiative itself. While the chief petitioners may have intended that an initiative that preserves the city waterfront for a public park function as a mere straw poll on the future of the waterfront, the text and context of the initiative indicate that the voters intended to establish a binding policy effectively rezoning the city waterfront as a public park. The initiative is therefore a final, non-advisory decision for purposes of LUBA’s jurisdiction. *Port of Hood River v. City of Hood River*, 47 Or LUBA 62 (2004).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. When viewed alone, the word “within” in a code provision that requires that dwellings must be within a template area to be counted is ambiguous, because it could mean the dwelling must be at least partially within or it could mean the dwelling must be entirely within. However, where a related provision specifies that “all or part of” a parcel must be within the template, the failure to include the “all or part of” modifier provides contextual support for interpreting the provision without the modifier as requiring that the entire dwelling must be within the template area. *Worman v. Multnomah County*, 47 Or LUBA 410 (2004).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. LUBA’s assumption that an ambiguous code provision should be interpreted in one way in a prior LUBA appeal where the correctness of that interpretation was not at issue is of extremely limited precedential value in a subsequent appeal where the correctness of that interpretation is at issue. *Worman v. Multnomah County*, 47 Or LUBA 410 (2004).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the local code provides a list of factors to be considered in order to demonstrate

compliance with a mandatory approval criterion, preceded by the phrase, “evaluation factors include,” the local government must consider the listed factors, or explain why particular factors need not be considered. *Bauer v. City of Portland*, 47 Or LUBA 459 (2004).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When a comprehensive plan has overlapping or conflicting policies, it is permissible for a local government to interpret them and apply them in a manner that balances those policies. *Milne v. City of Canby*, 46 Or LUBA 213 (2004).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. Arbitrary and inconsistent interpretation of approval criteria in deciding applications for land use permits can provide a basis for reversal or remand; however where a city applies a plan policy to one kind of decision and does not apply it to another kind of decision, the differences in the two decisions can explain the different applications of the plan policy. *Citizens for Env. Resp. Dev. v. City of Beaverton*, 45 Or LUBA 378 (2003).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. Where a city’s interpretation that a broadcast radio tower may be allowed in a residential zoning district as a “private utility” and a “utility substation and related facilities” includes a number of erroneous interpretations of the city’s zoning ordinance, but LUBA identifies a potentially sustainable interpretation of relevant zoning ordinance terms that would appear to permit approval of the radio tower, remand is nevertheless required where there are reasons why the city might not agree with LUBA’s interpretation. *Citizens for Env. Resp. Dev. v. City of Beaverton*, 45 Or LUBA 378 (2003).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Generally, where a civil statute of limitation is changed to shorten the limitation period, the change is applied prospectively only. But where the statute is changed to lengthen the limitation period, the change applies both prospectively and retroactively. Applying that principle to ORS 215.417, forest template dwelling permits with a two-year duration that were issued before ORS 215.417 took effect, but which had not yet expired on the date ORS 215.417 took effect, must be honored for four years. *Butori v. Clatsop County*, 45 Or LUBA 553 (2003).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. Although ORS 197.829(2) authorizes LUBA to interpret city zoning ordinances, where the city fails to do so and both petitioner and respondent present possible interpretations in their briefs that are plausible but both interpretations have problems, LUBA will remand the decision to the city so that it may address the interpretive issue in the first instance. *Renaissance Development v. City of Lake Oswego*, 45 Or LUBA 312 (2003).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. In considering whether a local government interpretation of a local provision is consistent with the express language of the provision under ORS 197.829(1), LUBA

may consider the context of the provision. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

1.1.2 Administrative Law - Interpretation of Law - Rules of Construction. A city's interpretation of comprehensive plan policies that apply to "residential development" as not applying to a proposed radio tower is not inconsistent with the language or apparent purpose of the policies and is therefore not reversible under ORS 197.829(1). *Citizens for Env. Resp. Dev. v. City of Beaverton*, 45 Or LUBA 378 (2003).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A prerequisite for application of the deferential standard of review under ORS 197.829(1) is, at a minimum, a written decision or document adopted by the governing body that contains an express or implicit interpretation of a local provision that is adequate for review. A city attorney's interpretation of a local provision is not entitled to deference under that standard, even assuming that the city council informally directed the city attorney to apply that interpretation in denying the challenged building permits. *West Coast Media v. City of Gladstone*, 44 Or LUBA 503 (2003).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A zoning map that has a scale of one inch equals 800 feet is not of so gross a scale that it cannot be relied upon to locate a zoning boundary line on a 26-acre parcel. *DLCD v. City of Gold Beach*, 43 Or LUBA 319 (2002).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a local governing body interprets comprehensive plan provisions not to impose relevant approval criteria for a particular rezoning request it is entitled to great deference on review. However, where a local governing body simply declares that the provisions are not approval criteria without any explanation, the declaration expresses no reviewable interpretation and the declaration is not entitled to deference. *Swyter v. Clackamas County*, 40 Or LUBA 166 (2001).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Rural fire service facilities in EFU zones under ORS 215.283(1)(w) need not be separately approved as utility facilities necessary for public service under 215.283(1)(d) or meet the "necessity test" that is applied to such utility facilities. *Keicher v. Clackamas County*, 39 Or LUBA 521 (2001).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Nothing in the context of the term "kennel" as used in ORS 215.283(2)(m) demonstrates that the intended meaning of that term is narrower than the plain dictionary definition, which refers to establishments for the breeding and boarding of dogs. A proposal to breed and propagate dogs for sale is thus a "kennel" subject to county regulation and not a "farm use" allowed outright in an EFU zone. *Tri-River Investment Co. v. Clatsop County*, 37 Or LUBA 195 (1999).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where Metro has separate sources of statutory authority to adopt certain plans and to require that certain local planning actions be taken to conform to those plans, and a plan that was originally adopted pursuant to the broader statutory authority is amended in a way that makes it subject to the more limited statutory authority, the more limiting statute applies. That one statute may limit what would otherwise be permissible in that circumstance does not result in a statutory conflict. *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A statute requiring that certain actions required under implementing ordinances adopted “pursuant to a regional framework plan” be delayed until the regional framework plan is acknowledged by LCDC does not apply where the implementing ordinance is not adopted pursuant to a regional framework plan. *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Once Metro incorporates a functional plan into its regional framework plan, any subsequent amendments to the incorporated functional plan are subject to the limits imposed by ORS 268.390(5) on implementing ordinances adopted “[p]ursuant to a regional framework plan.” *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will reject a local government interpretation of a statute that would leave the universe of ordinances nominally regulated by the statute vacant. Such a construction fails to give effect to all subsections of the statute, contrary to ORS 174.010. *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When a local zoning ordinance defines “Recreational Vehicle Camping Facilities” and explicitly permits such facilities in nine zones, but does not allow such facilities in a forest zone, such a facility is not properly allowed in the forest zones as a “campground.” *Cotter v. Clackamas County*, 36 Or LUBA 172 (1999).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The rule of statutory construction favoring a particular provision over an inconsistent general provision is of limited help where the statutes governing street vacation decisions and land use decisions can both be viewed as defining particular kinds of city decisions. *Root v. City of Medford*, 35 Or LUBA 814 (1998).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When viewed in context, ORS 271.134(4) and ORS 53.20 do not unambiguously grant the circuit court jurisdiction to review all city street vacation decisions. The context for ORS 271.134(4) and ORS 53.20 includes other statutes concerning appellate review of city decisions, such as ORS 197.825(1) and ORS 197.015(10)(a), which govern appellate review of land use decisions. *Root v. City of Medford*, 35 Or LUBA 814 (1998).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The appropriate way to give effect to statutes governing judicial review of city street vacation decisions and LUBA review of city land use decisions is to require that city street vacation decisions that are also land use decisions be reviewed by LUBA as land use decisions while requiring that city street vacation decisions that are not land use decisions be reviewed by circuit court. *Root v. City of Medford*, 35 Or LUBA 814 (1998).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a city code provision grants a city authority to prescribe the "manner" of submitting the "application and related information" but the city has not adopted substantive requirements to implement that authority, the city may not interpret the code provision to deny an application simply because it was signed by the applicant rather than the record title holder. *Doumani v. City of Eugene*, 35 Or LUBA 388 (1999).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Legislative history makes it clear that "needed housing" is not to be subjected to standards, conditions or procedures that involve subjective, value-laden analyses designed to balance or mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or community. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A code requirement that a street connection need not be required if certain circumstances exist does not obligate the local government to expressly find that such circumstances do not exist before requiring the street connection. *Hannah v. City of Eugene*, 35 Or LUBA 1 (1998) (1998).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a local provision sets forth criteria in the disjunctive, but the sense and context of the provision compel application of each criterion, LUBA will affirm as reasonable and correct an interpretation by the local planning commission that the criteria must be satisfied *seriatim* rather than alternatively. *Recovery House VI v. City of Eugene*, 34 Or LUBA 486 (1998).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The statutory definition of "public road" at ORS 368.001(5) is not applicable to approval of a forest template dwelling required by ORS 215.750(5) to be located on a tract that abuts a "road." Interpretation of a local code requirement that such dwellings be located on a "public road" is controlled by local legislative intent rather than by statute. *Petersen v. Yamhill County*, 33 Or LUBA 584 (1997).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA uses the same analytical framework to interpret an agency rule that it uses to interpret a statute, first examining the text and context of the rule to discern the intent of the rule makers, turning to contextual history only if that intent is unclear. *DLCD v. Jackson County*, 33 Or LUBA 302 (1997).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA cannot employ the rules of statutory construction to interpret plan and code provisions even when it does so only as a means to establish a baseline from which to determine whether a local government interpretation is "clearly wrong" or "beyond a colorable defense." *Downtown Community Assoc. v. City of Portland*, 33 Or LUBA 140 (1997).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Provisions of a zoning ordinance should be interpreted in a manner which gives meaning to all parts of the ordinance. *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Under ORS 174.010, LUBA must give effect, if possible, to all provisions or particulars of a statute. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The inclusion of specific uses in an administrative rule tends to imply an intent to exclude related uses not mentioned. *J.C. Reeves Corp. v. Washington County*, 31 Or LUBA 115 (1996).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. After *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), the general rules of statutory construction are not dispositive in LUBA review of local government interpretations of their own comprehensive plans and land use regulations. Nevertheless, the rules are helpful in supporting a determination that a local government's interpretation is not clearly wrong. *Huntzicker v. Washington County*, 30 Or LUBA 397 (1996).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Labels "substantive," "procedural" and "remedial," used in characterizing amendments to statutes, are not an adequate substitute for an analysis of how a new statute should apply to existing rights. *Ramsay v. Linn County*, 30 Or LUBA 283 (1996).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Absent some clear indication to the contrary, legislative acts are not to be applied retroactively. *Ramsay v. Linn County*, 30 Or LUBA 283 (1996).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When prospective application of a statute is required, the statute must be applied in a manner that does not affect legal rights and obligations arising out of past actions or occurrences. *Ramsay v. Linn County*, 30 Or LUBA 283 (1996).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where two separate ordinance provisions arguably establish two different deadlines for the filing of a local appeal, the more general ordinance provision is controlled by the more specific provision. *Sparks v. City of Bandon*, 30 Or LUBA 69 (1995).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. In the absence of some specific indication of a contrary intent, terms should be read consistently throughout a local government's plan and implementing development code. *Friends of Neabeack Hill v. City of Philomath*, 30 Or LUBA 46 (1995).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. ORS 215.236(2) requires that farm assessment disqualifications be filed within 120 days of approval of a nonfarm dwelling permit only when the subject property is assessed for farm use at the time of approval. A county's decision to modify a condition of approval requiring disqualification from farm assessment within 120 days after approval does not violate ORS 215.236(2) when the subject property was not assessed for farm use at the time of approval. *Wakeman v. Jackson County*, 29 Or LUBA 521 (1995).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the city's zoning code allows private households in the commercial-service/professional zone so long as the private households meet the development standards of a multi-family zone, LUBA will affirm the city's interpretation that private households includes a multiplex dwelling. *Stevens v. City of Medford*, 29 Or LUBA 422 (1995).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the city's zoning code provides that some permitted uses are subject to special use restrictions, LUBA will affirm the city's interpretation that the existence of special use restrictions does not convert a permitted use into an unpermitted use. *Stevens v. City of Medford*, 29 Or LUBA 422 (1995).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When the language of a state regulation is clear, neither LUBA nor a local government may alter its meaning through interpretation. *Testa v. Clackamas County*, 29 Or LUBA 383 (1995).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA may not, through interpretation, alter the express meaning of a state regulation, even when the regulation has unanticipated consequences when applied locally in conjunction with an acknowledged zoning ordinance. *Testa v. Clackamas County*, 29 Or LUBA 383 (1995).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. For ORS 197.829(4) to apply to LUBA's review of a governing body's interpretation of its own code, the connection between the local code provision and the statewide planning goal it is arguably designed to implement must be a close one. ORS 197.829(4) was not adopted to allow LUBA to reconsider the propriety of the original acknowledgment of comprehensive plans and land use regulations. *Friends of the Metolius v. Jefferson County*, 28 Or LUBA 591 (1995).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where an EFU zone includes two provisions allowing churches and schools, and one of those provisions includes the OAR 660-33-130(3) restriction against approving churches and

schools within 3 miles of an urban growth boundary but the other provision does not, LUBA will not assume the county will apply the provision that lacks the 3 mile limitation as though it includes the 3 mile limitation. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. If a county implements ORS 215.418(1) by providing in its code that it will notify DSL of "developments" in wetlands identified on the State-wide Wetlands Inventory, it must interpret "developments" consistently with the types of development applications and approvals for which such notice is required by ORS 215.418(1)(a)-(e). *Redland/Viola CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Neither ORS 222.173 nor ORS 222.115 purports to preempt local government use of consents to annexation in circumstances other than those identified in ORS 222.173(1). Statements by individual legislators during legislative proceedings leading to adoption of ORS 222.115 expressing general hostility towards involuntary annexation do not establish a legislative intent to preclude city or county legislation concerning consents to annexation. *Bear Creek Valley San. Auth. v. City of Medford*, 27 Or LUBA 328 (1994).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. After *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), it is not clear whether general rules of statutory construction are relevant in LUBA review of local government interpretations of their own comprehensive plans and land use regulations. Even if they are, general rules of statutory construction are not absolute. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. That a proposed paintball game park could be allowed as a "private recreation use" in a commercial zone does not mean it cannot be allowed as a "park" in an EFU zone. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local government's interpretation of "park," as used in a provision of its zoning ordinance, need not be consistent with a definition of "park areas" in a separate ordinance establishing administrative regulations for the use of parks owned or controlled by the local government. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. That a local government may have, in the past, erroneously interpreted its ordinances as not requiring a public hearing, does not require that the local government perpetuate that error. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a "generally unsuitable" approval standard for nonforest dwellings established by an LCDC enforcement order provides that land with certain soil types is presumed *not* to be

"generally unsuitable," unless findings explain why "other factors" make the land generally unsuitable, it is reasonable to interpret such "other factors" to be limited to the physical characteristics listed in the first part of the approval standard. *DLCD v. Klamath County*, 25 Or LUBA 355 (1993).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. All provisions of the act that created ORS 215.301 must be related to uses allowed in EFU zones. Therefore, ORS 215.301 applies only to asphalt plants sited in EFU zones, not to an application to site an asphalt plant in an industrial zone. *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The rules applicable to the severability of statutes are also applicable to local enactments. Thus, an unconstitutional ordinance provision will be severed from the remainder unless it is apparent that the local legislative body would not have enacted the regulation without the disputed provision, or the remaining parts of the regulation would be incomplete and incapable of being executed in accordance with the legislative intent. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 466 (1993).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Local ordinances governing when a local decision becomes final are effective only to the extent they do not conflict with state statutes. *A Storage Place v. City of Tualatin*, 24 Or LUBA 637 (1993).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a code provision is capable of more than one rational interpretation, and the code provision was adopted to implement an LCDC administrative rule, consideration of the context and purpose of the administrative rule is relevant in determining the meaning of the code provision. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where there is no definition of the term "golf course" in the local code, the plain and ordinary meaning of that term as it is defined in the dictionary applies, and a driving range is not the equivalent of a golf course. *DLCD v. Columbia County*, 24 Or LUBA 338 (1992).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a local code identifies RV camping facilities as one type of service recreational facility, and certain zones specifically list RV camping facilities as a conditional use, whereas other zones list only service recreational facilities in general, the other zones simply allow a broader range of service recreational facilities, including RV camping facilities. *Tylka v. Clackamas County*, 24 Or LUBA 296 (1992).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a term used in a local enactment is not defined in that or other local enactments, the term must be construed in accordance with its plain and ordinary meaning, absent some

evidence of a contrary local legislative intent. *Thatcher v. Clackamas County*, 24 Or LUBA 207 (1992).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will refer to legislative history only where the terms of a disputed statute are ambiguous. *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The existence of overlapping prohibitions in a local code does not provide a sufficient basis for creating an exception to one of the overlapping prohibitions that has no basis in the language of the code. *Goose Hollow Foothills League v. City of Portland*, 24 Or LUBA 69 (1992).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A county comprehensive plan map with a scale of 1 inch to 9 miles is ambiguous and, therefore, the county must interpret and apply its plan map to specific properties in the first instance. *Larson v. Wallowa County*, 23 Or LUBA 527 (1992).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where there is neither a local code nor a statutory definition of the term "perennial," the commonly understood meaning of that term is applied. Under the commonly understood meaning of "perennial," a Christmas tree is a perennial under ORS 215.213(2)(b)(A). *Harwood v. Lane County*, 23 Or LUBA 191 (1992).