

30.3 Zoning Ordinances – Applicability. ORS 215.750 does not prohibit a local government from applying a local code provision requiring an applicant for a forest template dwelling to demonstrate that the dwelling is “necessary for and accessory to” the forest use. *Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007).

30.3 Zoning Ordinances – Applicability. LUBA will not defer to a local government’s interpretation of the phrase “necessary for and accessory to” forest management as meaning “convenient and efficient” to forest management, where such an interpretation is contrary to the plain meaning of the word “necessary,” the express language of the provision at issue, and other language in the provision. *Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007).

30.3 Zoning Ordinances – Applicability. A county’s decision to accept a deed for a road easement is a land use decision, where the county has adopted procedures as part of its subdivision regulations that require the county to apply standards in those regulations and its zoning ordinance in accepting land for use as county roads. *Niederhof v. Deschutes County*, 48 Or LUBA 626 (2004).

30.3 Zoning Ordinances – Applicability. Where the city’s new acknowledged comprehensive plan includes a provision stating that existing development zones continue to apply until the new code is acknowledged, it is within the city’s discretion under ORS 197.829(1) to interpret that plan provision to resolve any conflicts between the old zoning code and new comprehensive plan designations. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

30.3 Zoning Ordinances – Applicability. Where an intergovernmental agreement calls for a county to incorporate into its plan and code the city’s ordinances and plan provisions that address lands within the UGB, but the county never does so, the county did not err in refusing to treat the city’s provisions as applicable approval criteria. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

30.3 Zoning Ordinances – Applicability. Where a county has not yet adopted land division regulations that apply to minor partitions, a minor partition nevertheless requires prior county approval of a variance under the zoning ordinance where one of the parcels created by the minor partition does not comply with the minimum parcel size that is required under the zoning ordinance. *DeBoer v. Jackson County*, 46 Or LUBA 24 (2003).

30.3 Zoning Ordinances - Applicability. Where a local government has adopted no local highway design safety standards, it commits no error by applying American Association of State Highway and Transportation Official standards to reject a subdivision opponent’s intersection site distance concerns, notwithstanding that it has not adopted those standards and may have been laboring under the incorrect assumption that it had adopted those standards. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

30.3 Zoning Ordinances – Applicability. Under a standard requiring that a proposed subdivision not create a “significant hazard to life or property,” a city may require evidence that development of property subject to flooding not present a significant flood hazard. That the subject is not mapped as a floodway on the city’s hazard maps and therefore not subject to the city’s flood hazard regulations does not mean that the city cannot address flood hazards under other applicable criteria. *Starks Landing, Inc. v. City of Rivergrove*, 43 Or LUBA 237 (2002).

30.3 Zoning Ordinances – Applicability. Where a city cannot find its acknowledged shoreland land use regulations, it may not apply the county’s shoreland land use regulations to approve a request to place fill in the shoreland; it must apply Goal 17 (Coastal Shorelands) directly. *Willhoft v. City of Gold Beach*, 39 Or LUBA 353 (2001).

30.3 Zoning Ordinances – Applicability. An access road to a winery is an accessory use to the winery. When the zoning for the location of the proposed access road does not allow wineries, the access road cannot be established as an accessory use on that part of the property. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

30.3 Zoning Ordinances – Applicability. Although ORS 215.296(10) allows a local government to impose additional standards on a conditional use permit for aggregate mining, it does not apply to a comprehensive plan amendment designating a significant resource site and establishing a surface mining overlay pursuant to the Goal 5 rules. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

30.3 Zoning Ordinances – Applicability. The conditional use approval criteria from local government ordinances do not apply to post-acknowledgement plan amendments pursuant to the Goal 5 rules. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

30.3 Zoning Ordinances – Applicability. New land use regulations can only become acknowledged under ORS 197.625(2) if the ordinance adopting those new land use regulations is “affirmed on appeal under ORS 197.830 to 197.855.” Where LUBA remands the adopting ordinance because a portion of the new land use regulations is found to be defective, without specifically affirming the remaining portions of those regulations, no part of the ordinance is considered acknowledged under ORS 197.625. *Western States v. Multnomah County*, 37 Or LUBA 835 (2000).

30.3 Zoning Ordinances – Applicability. Where a code provision authorizing permit revocation is expressly limited to Type II discretionary permits, the code provision does not authorize revocation of Type I ministerial permits. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

30.3 Zoning Ordinances – Applicability. A code provision authorizing the county to institute “appropriate proceedings to prevent, enjoin * * * abate, or remove the unlawful location, construction, maintenance, repair, alteration or use” of unlawfully constructed structures is sufficient to authorize the county to institute proceedings to revoke a ministerial zoning permit where the structure actually constructed under the zoning permit

is inconsistent with the site plan that was approved by the zoning permit. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

30.3 Zoning Ordinances – Applicability. Because ORS 368.361(3) imposes on the county the obligation to conduct proceedings and make findings in vacating a county right-of-way within city limits, the county and not the city has the obligation of applying any provisions of the city's comprehensive plan or land use ordinance that the city would apply, were the city conducting the vacation. *Oregon Shores Cons. Coalition v. Lincoln County*, 36 Or LUBA 288 (1999).

30.3 Zoning Ordinances – Applicability. ORS 197.175 requires that land use decisions comply with acknowledged comprehensive plans. When approval criteria included in acknowledged land use regulations entirely displace the comprehensive plan as relevant approval criteria, the comprehensive plan must make that intent clear. *Durig v. Washington County*, 35 Or LUBA 196 (1998).

30.3 Zoning Ordinances – Applicability. 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).

30.3 Zoning Ordinances – Applicability. Where there is no requirement to determine whether property is surplus for purposes of rezoning, a local government does not violate any procedural rights by not considering the surplus status of the property in its decision to rezone the property. *St. Johns Neighborhood v. City of Portland*, 34 Or LUBA 46 (1998).

30.3 Zoning Ordinances – Applicability. Where a local code requires that manufactured home parks "which contain land within the floodplain district" be subject to a "Type III" review, Type III review is required to approve a proposed manufactured home park, notwithstanding that no "development" is proposed for the portion of the park located in the floodplain district. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

30.3 Zoning Ordinances – Applicability. A "public need" approval standard contained in a resolution attached as an appendix to the acknowledged zoning ordinance was not repealed by implication and must be applied to a request for permit approval. *Port Dock Four, Inc. v. City of Newport*, 33 Or LUBA 613 (1997).

30.3 Zoning Ordinances – Applicability. When a local governing body determines that a condition imposed in connection with an earlier land use decision either has or has not been complied with, but does not base its determination on the interpretation and application of land use regulations, the determination is not a land use decision over which LUBA has jurisdiction. *Mar-Dene Corp. v. City of Woodburn*, 33 Or LUBA 245 (1997).

30.3 Zoning Ordinances – Applicability. A county that wishes to limit lot-of-record dwellings to protect agricultural lands cannot rely on policies and regulations implementing ORS 215.283(3)(d), which protects agricultural land, but must legislatively adopt new policies and regulations pursuant to ORS 215.705(5). However, policies and regulations with an apparent purpose other than to protect agricultural land are not superseded by ORS 215.705. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

30.3 Zoning Ordinances – Applicability. Where the city's zoning code requires a structure or use be lawfully existing at the time the ordinance making it nonconforming was adopted, the city may not find an existing use to be nonconforming until it determines, based on substantial evidence, that the use was lawfully existing at the time the ordinance making it nonconforming was adopted. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

30.3 Zoning Ordinances – Applicability. The city's affirmation of the status of an existing use as a nonconforming use requires the application of the city's zoning ordinance and is therefore a land use decision over which LUBA has jurisdiction. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

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30.3 Zoning Ordinances – Applicability. Under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed2d 304 (1994) and *J.C. Reeves Corp. v. Clackamas County*, 131 Or App 615, 887 P2d 360 (1994), the city must show a right-of-way dedication is roughly proportional to the impact of a proposed development. To require the dedication when the city finds there will be no impact is unconstitutional. *Gensman v. City of Tigard*, 29 Or LUBA 505 (1995).

30.3 Zoning Ordinances – Applicability. Where a local government has a combined comprehensive plan and zoning map, there can be no *Baker* comprehensive plan/zoning map conflict. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

30.3 Zoning Ordinances – Applicability. Where a local government's acknowledged comprehensive plan and land use regulations apply a freshwater wetland designation to certain property, the local government's application of regulations governing freshwater wetlands to development of the subject property is not error, even though comprehensive

plan inventory documents suggest the property is in fact a saltwater marsh. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

30.3 Zoning Ordinances – Applicability. For a decision to concern the application of a land use regulation, as provided in ORS 197.015(10)(a)(A)(iii), it is not enough that the decision touch on some aspect of a land use regulation; the land use regulation must contain provisions that are standards or criteria for making the challenged decision. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

30.3 Zoning Ordinances – Applicability. A county can establish procedures for determinations concerning nonconforming uses as part of its zoning ordinance and, if it does so, can require parties to seek a determination regarding the existence or expansion of a nonconforming use through such zoning ordinance procedures, rather than allowing such issues to be initially determined in the county's code enforcement process. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

30.3 Zoning Ordinances – Applicability. Regardless of whether a goal exception for a proposed bridge and connector road is properly adopted, the zoning applied to the site of the proposed bridge and connector road must allow those uses. *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993).

30.3 Zoning Ordinances – Applicability. Where a comprehensive plan or land use regulation does not explicitly designate which portions of the plan or land use regulation operate as mandatory land use approval criteria, a case-by-case inquiry, examining the wording and context of the particular plan and land use regulation provisions, is required to identify mandatory approval standards. *Eskandarian v. City of Portland*, 26 Or LUBA 98 (1993).

30.3 Zoning Ordinances – Applicability. Where a challenged decision grants subdivision approval, petitioner's challenge to a finding that the property is located in two residential zones provides no basis for reversal or remand, where petitioner makes no attempt to explain why the zoning of the property is critical to the decision and both zones impose the same minimum lot area. *Eola-Glen Neighborhood Assoc. v. City of Salem*, 25 Or LUBA 672 (1993).

30.3 Zoning Ordinances – Applicability. The use of land for a recreational parachuting center and for parachute landings is a "land use" subject to regulation by local land use ordinances. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

30.3 Zoning Ordinances – Applicability. The standards in effect at the time a development application is filed are the standards applicable to approval of such development applications. *Veach v. Wasco County*, 23 Or LUBA 515 (1992).

30.3 Zoning Ordinances – Applicability. Comprehensive plan policies and local code requirements establishing standards for construction of streets are not approval standards

applicable to comprehensive plan transportation map amendments. *Davenport v. City of Tigard*, 22 Or LUBA 577 (1992).

30.3 Zoning Ordinances – Applicability. A local governing body is required by ORS 197.175(2)(d) to apply applicable provisions of its comprehensive plan and land use regulations in determining whether a wrecking certificate should be approved, notwithstanding that it has not adopted regulations as authorized by ORS 822.140(3). *Bradbury v. City of Independence*, 22 Or LUBA 398 (1991).

30.3 Zoning Ordinances – Applicability. Conditions imposed on particular property as part of the adoption of a quasi-judicial plan amendment/zone change are potentially applicable to decisions approving development of that property. *Broetje-McLaughlin v. Clackamas County*, 22 Or LUBA 198 (1991).

30.3 Zoning Ordinances – Applicability. Even where the local code's definition of "use" is broad, some *de minimus* or transitory purposes for which land is "arranged, designed[,] intended [or] occupied" do not come under the code's regulation of uses. However, a proposed use of property as a part time site for a motor home, involving grading, tree removal and deposition of 60 cubic yards of gravel, is not properly included in such an exception. *Tylka v. Clackamas County*, 22 Or LUBA 166 (1991).

30.3 Zoning Ordinances – Applicability. Where a previous local decision approved alteration of a nonconforming use for only two years, a request to remove that limitation is a request for a new approval for alteration of a nonconforming use, and the local government must apply its code criteria for alteration of a nonconforming use to such a request. *Scott v. Josephine County*, 22 Or LUBA 82 (1991).

30.3 Zoning Ordinances – Applicability. A zoning ordinance lot dimension requirement that lots in a particular zone be a certain width "at the front building line" is applicable to the creation of an undeveloped lot. *Ward v. City of Lake Oswego*, 21 Or LUBA 470 (1991).

30.3 Zoning Ordinances – Applicability. A local code statement of an intent not to encourage perpetuation of nonconforming uses and plan policies which are directed at zoning decisions and adoption of implementing land use regulations and planning inventories do not state approval standards applicable to decisions concerning modification of individual nonconforming uses. *Strawn v. City of Albany*, 21 Or LUBA 172 (1991).

30.3 Zoning Ordinances – Applicability. A code provision requiring submittal of information to allow county planning staff to set standards pertaining to "location, quality and quantity" of the resource available is not an approval criterion and, therefore, does not impose an obligation that the county adopt findings establishing the location, quality and quantity of the resource. *Keudell v. Union County*, 19 Or LUBA 394 (1990).

30.3 Zoning Ordinances – Applicability. Whether comprehensive plan goals and policies or zoning ordinance purpose sections are approval standards for conditional use approval in a particular instance, depends upon an examination of the relevant plan and code provisions. *Rowan v. Clackamas County*, 19 Or LUBA 163 (1990).