31.2.3 Permits – Types – Design Review. Where a local code provision requires that site design review be based upon consideration of the "[c]haracteristics of adjoining and surrounding uses," the local government does not err by characterizing adjoining and surrounding uses simply as farm uses, even where the adjoining and surrounding lands contain dwellings, where the lands are zoned for farm and forest uses, where the dwellings are allowed in conjunction with farm and forest uses, and where the purpose of the zones and the comprehensive plan is to protect and conserve farm and forest lands for farm and forest uses. *Anderson v. Yamhill County*, 81 Or LUBA 618 (2020).

31.2.3 Permits – Types – Design Review. Where a local code provision requires that uses be conducted "wholly within an enclosed structure"; where the local code defines "structure" as both "[a]nything which is constructed, erected or built and located on or under the ground, or attached to something fixed to the ground," and "[a] walled and roofed building including a gas or liquid storage tank that is principally above ground"; where the first definition was in effect when the enclosed structure requirement was first enacted; and where the second definition was enacted as part of an ordinance that related to compliance with FEMA's requirements to participate in the National Flood Insurance Program, LUBA will affirm a local governing body's interpretation of the enclosed structure requirement, relying on the first definition of "structure," to allow a use that is surrounded by building walls, retaining walls, and fences. *Beaverton Business Owners, LLC v. City of Beaverton*, 81 Or LUBA 224 (2020).

31.2.3 Permits – Types – Design Review. Where a local design guideline provides that "[p]rimary building entrances should be oriented toward and located in close proximity to public streets and public street intersections" and that "[p]roperty size, shape and topographical conditions should also be considered," LUBA will affirm a local governing body's interpretation of that guideline to allow the primary entrance to a proposed development to be located on the opposite side of the property and oriented away from public streets where the primary entrance would nevertheless be "in close proximity to" those public streets and connected to those public streets with multiple pedestrian connections, and where the triangular shape of the property and a partially adjacent high-speed on-ramp to a highway support the applicant's choice to cluster the proposed development toward the public streets and provide a primary entrance on the opposite side of the property. *Beaverton Business Owners, LLC v. City of Beaverton*, 81 Or LUBA 224 (2020).

31.2.3 Permits – Types – Design Review. Where a prior decision approved a plan amendment and zone change for the subject property and included a condition of approval limiting the type of future development to a "retail shopping center" and the size of future development to a certain square footage of gross leasable area, but where the prior decision approved no specific development, voluntary descriptions, statements, or representations made by the applicant during the prior proceeding regarding the particular store with which the shopping center would be developed are not binding on the applicant in a subsequent site plan review proceeding unless they were memorialized in conditions of approval for the prior decision. *M & T Partners, Inc. v. City of Salem*, 80 Or LUBA 221 (2019).

31.2.3 Permits – Types – Design Review. Where a significant resource overlay zone provision requires that (1) resource sites not be altered or impacted to a degree that destroys their significance, (2) the proposed development not result in the loss of habitat for threatened or endangered species, (3) all feasible alternatives to the development that would not result in a

substantial adverse impact on identified resource values be considered and rejected, (4) the development be sited on the property in such a manner that minimizes adverse impacts on identified resources, and (5) documentation be provided regarding requirements for state or federal permits or licenses and that appropriate resource management agencies have reviewed the development proposal against their plans, policies, and programs, the local government does not err in concluding that that provision applies at the development stage rather than the PAPA stage. *VanSickle v. Klamath County*, 80 Or LUBA 241 (2019).

31.2.3 Permits – Types – Design Review. Where a design guideline for a historic district in a city requires that exterior alterations and additions to historic resources "be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally * * * with the rest of the District," where the city council interprets the term "compatible" as not requiring uniformity, and where the petitioner has not demonstrated that that interpretation is inconsistent with the express language, purpose, or underlying policy that provides the basis for that design guideline, LUBA will uphold the city council's conclusion that two proposed new buildings meet the design guideline because they are similar to a historic resource on the same property, to adjacent properties, and to the historic district with respect to some design elements, even where they are dissimilar to adjacent properties with respect to other design elements. *NDNA v. City of Portland*, 80 Or LUBA 269 (2019).

31.2.3 Permits – Types – Design Review. A hearings officer does not misconstrue a development code requirement that a project applicant must demonstrate that environmental impacts have been "minimized to the extent practicable," in finding that the project applicant is not required to propose a smaller sized dwelling. *McAndrew v. Washington County*, 78 Or LUBA 21 (2018).

31.2.3 Permits – Types – Design Review. A petitioner's argument that an application to modify a site plan to replace a previously approved produce stand with a coffee kiosk cannot be processed as a modification, but instead requires a new site plan application, does not provide a basis for remand, where the local government adopted findings rejecting that argument, and the petitioner does not challenge those findings. *Aboud v. City of Stayton*, 77 Or LUBA 300 (2018).

31.2.3 Permits – Types – Design Review. A petitioner's argument that the city erred in processing the application as a minor rather than major site plan modification does not provide a basis for remand, where the city adopted findings that the only difference between a major and minor modification is procedural, and the petitioner does not argue that the procedures the city provided, including a hearing that petitioner attended, prejudiced petitioner's substantial rights. *Aboud v. City of Stayton*, 77 Or LUBA 300 (2018).

31.2.3 Permits – Types – Design Review. A petitioner's argument that the city erred in failing to require the applicant for a site plan modification to include landscaping information that was omitted from the original site plan application does not provide a basis for remand, where the applicant proposed no changes to the landscaping, and the city determined that its authority extended only to proposed modifications to the original site plan. *Aboud v. City of Stayton*, 77 Or LUBA 300 (2018).

31.2.3 Permits – Types – Design Review. LUBA will reject an argument that because a city's discretionary site review standards apply to proposed development, the city's approval is thus a "permit" as defined at ORS 227.160(2) (discretionary approval of the development of land), where even if the city's site review standards apply, the result would be a limited land use decision as defined at ORS 197.015(12), which is excluded from the ORS 227.160(2) definition of permit. *McCollough v. City of Eugene*, 74 Or LUBA 573 (2016).

31.2.3 Permits – Types – Design Review. LUBA will reject a proposed interpretation of a city code site review provision that would broadly apply to all proposed needed housing, including single-family dwellings, and result in imposition of discretionary standards and lengthy procedures that could easily have the effect of discouraging needed housing, contrary to ORS 197.307(4), where there is an alternative interpretation that harmonizes the relevant text and context and does not force the city's code into conflict with ORS 197.307(4). *McCollough v. City of Eugene*, 74 Or LUBA 573 (2016).

31.2.3 Permits – Types – Design Review. Where a city's code offers a path for developers to qualify proposed housing as "needed housing," in order to obtain waiver of certain standards that would otherwise apply, LUBA will similarly interpret a related code provision requiring that site review provisions be applied when "the application proposes needed housing," to the effect that the site review provisions apply only if the applicant seeks to qualify the proposed housing as "needed housing." *McCollough v. City of Eugene*, 74 Or LUBA 573 (2016).

31.2.3 Permits – Types – Design Review. To address a historic design standard requiring that new construction be "compatible with the appearance and character of the historic district," adequate findings must, at a minimum, (1) describe the appearance and character of the historic district, as relevant, (2) describe the appearance and character of the proposed structure, and (3) explain why the proposed structure is or is not compatible with the appearance and character of the historic district. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

31.2.3 Permits – Types – Design Review. To address a historic design standard requiring that new construction be "compatible with the appearance and character of the historic district," the decision-maker is not required to reference the description of the appearance and character of a historic district included in the nomination to the federal historic register, but that description is a relevant and convenient source. Because the decision-maker must base the compatibility analysis on something, unless the decision-maker duplicates some of the descriptive work in the federal register nomination, there may be no practical substitute for considering the federal register nomination. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

31.2.3 Permits – Types – Design Review. Remand for more adequate findings is required where a historic design standard requires a finding that the relationship of new construction to the street and open space between buildings is compatible with the adjacent historic buildings and the historic character of the surrounding area, but the findings address only compliance with code setback requirements, and fail to identify or address compatibility with adjacent historic buildings and the historic character of the surrounding area. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

31.2.3 Permits – Types – Design Review. A finding that the height of new construction is "similar" to dwellings within a historic district is insufficient to establish compliance with a standard requiring that new construction not exceed the height of historic buildings in the surrounding area, where the surrounding area includes both historic and non-historic buildings, and the findings do not identify what buildings the height is compared to, or find that the height of new construction does not exceed the height of the tallest historic building in the surrounding area. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

31.2.3 Permits – Types – Design Review. LUBA will affirm a city council's code interpretation to the effect that minimum frontage and floor-area-ratio standards apply to the collective structures of a proposed fueling station as a whole, including the canopy, paved area, and an exterior trellis wall, even though the standards do not easily apply to those structures viewed individually, where the petitioner fails to demonstrate that the city council's interpretation is inconsistent with the express language, purpose or underlying policy of the code. *Save Downtown Canby v. City of Canby*, 70 Or LUBA 68 (2014).

31.2.3 Permits – Types – Design Review. LUBA will affirm a city council's code interpretation to the effect that minimum frontage and floor-area-ratio standards apply to the collective structures of a proposed fueling station as a whole, including the canopy, paved area, and an exterior trellis wall, even though the standards do not easily apply to those structures viewed individually, where the petitioner fails to demonstrate that the city council's interpretation is inconsistent with the express language, purpose or underlying policy of the code. *Save Downtown Canby v. City of Canby*, 70 Or LUBA 68 (2014).

31.2.3 Permits – Types – Design Review. Where a city code limits the maximum number of parking spaces, and requires that parking must be provided on the same lot as the building served, or on an off-site lot within 500 feet of the building, a hearings officer misconstrues the code to allow parking spaces that are intended to serve hospital campus buildings that are located more than 500 feet away, under the theory that the various lots that make up the hospital campus constitute a single "lot" and the various buildings of the hospital campus a single development, where nothing in the code provides that the hospital campus is a single lot or constitutes a single development for off-street parking purposes. *SCAN v. City of Salem*, 70 Or LUBA 468 (2014).

31.2.3 Permits – Types – Design Review. A hearings officer does not misconstrue a site plan review standard requiring a finding that "negative impacts to the transportation system are mitigated adequately" as not requiring the applicant to construct bike lanes that are shown in the Bicycle System Element of the city's Transportation System Plan (TSP), where the code standard does not refer to the TSP or indicate that site plan review is the vehicle to provide for construction of bike lanes depicted in the TSP. *SCAN v. City of Salem*, 70 Or LUBA 468 (2014).

31.2.3 Permits – Types – Design Review. A city staff interpretation that a site design review permit is not a "development permit" subject to certain submittal requirements because site design review does not directly authorize any alteration of land is inconsistent with the applicable text and context, where under that interpretation none of the city's discretionary or nondiscretionary permits qualify as development permits, leaving the category of development permits an empty set. *CRAW v. City of Warrenton*, 67 Or LUBA 263 (2013).

31.2.3 Permits – Types – Design Review. A code provision prohibiting the location of loading docks on a building side that faces the highway is not concerned with the orientation of the loading docks, but the orientation of the building side. The code provision is not met by a loading dock located against an L-shaped façade with the long axis facing the highway. *CRAW v. City of Warrenton*, 67 Or LUBA 263 (2013).

31.2.3 Permits – Types – Design Review. LUBA will sustain a city council interpretation of a 1991 planning commission site plan decision to approve both a 70,000-square-foot retail store and a 30,000-square-foot "future expansion" area, notwithstanding a condition that refers only to approval of the retail store, where the site plan depicts both improvements, the 1991 decision approves the "site plan" without restriction, and the record indicates that the planning commission intended to approve both improvements. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

31.2.3 Permits – Types – Design Review. LUBA will sustain a city council interpretation of a site plan condition of approval to impose no limits on the type merchandise sold at a retail store that is allowed outright in the applicable zone, where the condition authorizes sale of "general merchandise, to include" listed examples, and the fairest reading of the condition is that the list of examples is illustrative, not exclusive. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

31.2.3 Permits – Types – Design Review. A site plan decision that approves (1) a building and (2) a "future expansion" of that same building is a single building, not separate phases or components of a multi-phase development, for purposes of determining whether there is a vested right to construct the expansion. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

31.2.3 Permits – Types – Design Review. A hearings officer does not err in interpreting a code standard requiring historic design review for alterations to a building having exterior materials "specifically listed" in the city's historic resource inventory not to require that contributing exterior materials be specifically described as contributing. If fairly read the text and context of the building description in the inventory indicates that a particular exterior material contributes to the building's significance, then historic design review is required to alter that exterior material. *Carlton Development LLC v. City of Portland*, 62 Or LUBA 157 (2010).

31.2.3 Permits – Types – Design Review. That a city's historic resource inventory lists a building's "wood sash windows" in the "Description" paragraph rather than in the "Significance" paragraph does not mean that the windows are not contributing features, where in context it is clear that the inventory uses the description paragraph to list all contributing and noncontributing building features, and the significance paragraph is simply a summary conclusion based on the features listed in the description paragraph. *Carlton Development LLC v. City of Portland*, 62 Or LUBA 157 (2010).

31.2.3 Permits – Types – Design Review. A hearings officer does not err in concluding that "wood sash windows" are specifically listed features contributing to a building's historic

significance, such that a historic design review permit is required to replace the windows with vinyl windows, where the city's inventory concludes that the building is a "contributing" resource based on the features listed in the building description, including the original wood sash windows. *Carlton Development LLC v. City of Portland*, 62 Or LUBA 157 (2010).

31.2.3 Permits – Types – Design Review. A governing body's interpretation of a design review criterion requiring that the "bulk and scale" of a proposed retail supercenter be "compatible" with surrounding buildings as necessitating a comparison of the size of the proposed buildings and surrounding buildings—and not just visual compatibility—is consistent with the text of the criterion and not reversible under ORS 197.829(1)(a). *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004).

31.2.3 Permits – Types – Design Review. There is no intrinsic reason why a regulatory concern to ensure compatibility of size between proposed and existing development must be expressed as zoning standards rather than as site design review standards. *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004).

31.2.3 Permits – Types – Design Review. A traffic engineer's critique of the applicant's traffic study that questions the accuracy and sufficiency of the study's calculation of traffic impacts and facility capacity is sufficient to support denial of proposed development under standards requiring the applicant to demonstrate that nearby transportation facilities can accommodate traffic impacts of the development. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

31.2.3 Permits – Types – Design Review. Denial of a proposed school bus storage yard is supported by evidence that access to the yard relies on a private fire lane that the applicant cannot improve and that limits bus movement, under design standards requiring a "safe and efficient" circulation pattern. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

31.2.3 Permits – Types – Design Review. Assuming ORS 197.522 is applicable outside the moratoria context, that statute does not require a local government to develop on its own conditions of approval that would render proposed development compliant with applicable criteria, as an alternative to denial. Rather, the initial burden of proposing conditions to make development consistent with applicable criteria belongs to the applicant. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

31.2.3 Permits – Types – Design Review. ORS 197.522 does not require a local government to reopen the record after reaching a tentative decision to deny a development application, to allow the applicant an opportunity to propose conditions that would allow approval. Rather, the applicant must propose such conditions during the evidentiary proceedings or in making final legal arguments to address concerns raised during the proceedings and ensure compliance with applicable criteria. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

31.2.3 Permits – Types – Design Review. The governing body is within its discretion under ORS 197.829(1) in interpreting a standard to be a post-approval performance standard on industrial uses rather than an approval criterion, where the standard is within a section entitled "performance

standards" and prescribes impermissible levels of pollution rather than approval criteria. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

31.2.3 Permits – Types – Design Review. Subjective, discretionary conditional use and design review criteria are precisely the type of land use regulations that Congress intended to regulate, as applied to religious practices and institutions, in enacting the Religious Land Use and Institutionalized Persons Act (RLUIPA). Although such standards may be "generally applicable" in the sense that they apply broadly to a number of secular and non-secular uses, their application to approve or deny a proposed church requires an "individualized assessment" and thus is subject to RLUIPA. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.2.3 Permits – Types – Design Review. Application of discretionary design review criteria to proposed religious buildings involves the "proposed use" of land within the meaning of, and is thus subject to, the Religious Land Use and Institutionalized Persons Act (RLUIPA), where the local government may deny a proposed church if the applicant fails to demonstrate compliance with such design review criteria. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

31.2.3 Permits – Types – Design Review. An apparent discrepancy between the sidewalks depicted on the site plan submitted for design review approval and the sidewalk depicted on the approved final subdivision plat does not provide a basis for reversal or remand, where the design review decision did not address sidewalks or approve a particular sidewalk design. *Jordan v. City of Portland*, 44 Or LUBA 586 (2003).

31.2.3 Permits – Types – Design Review. Where a city code provision requires that a "proposal" to adjust development standards be reviewed for compliance with specific criteria, it is reasonable for the city to determine that the scope of the "proposal" is the adjustment proposed by the applicant and therefore that an application for a setback adjustment for a building facade does not require review of the building design as a whole. *Lee v. City of Portland*, 40 Or LUBA 498 (2001).

31.2.3 Permits – Types – Design Review. Where petitioner raises issues regarding whether a proposed site design complies with potentially applicable approval criteria, the local government's decision must respond by either (1) determining that the cited provisions are not applicable approval criteria or (2) demonstrating that the proposal complies with such provisions. *Elliott v. City of Redmond*, 40 Or LUBA 242 (2001).

31.2.3 Permits – Types – Design Review. A city does not err in failing to provide a local appeal of a design review decision under design review procedures, where the subject property is within an historic district and the city's code specifies that design review proposals in historic districts are governed by historic design procedures that provide no right of local appeal. *Multi-Light Sign Co. v. City of Portland*, 39 Or LUBA 605 (2001).

31.2.3 Permits – Types – Design Review. Where a site design review criterion requires that, "wherever possible," direct driveway access to arterial streets not be allowed, and the challenged decision approves a site plan with direct driveway access onto an arterial street and a collector

street without explaining why it is not possible to limit access to the collector street, the decision must be remanded. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

31.2.3 Permits – Types – Design Review. 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).

31.2.3 Permits – Types – Design Review. Local government decisions granting design review approval for segments of a light rail transit (LRT) line that do not approve final *engineering* design or construction of the LRT facility are not within the exception to the definition of "land use decision" established by ORS 197.015(10)(b)(D). *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

31.2.3 Permits – Types – Design Review. Local government decisions granting design review approval for segments of a light rail transit line do not adopt or amend a city or county public facility plan and, therefore, are not excluded from being considered "land use decisions" under ORS 197.712(2)(e). *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

31.2.3 Permits – Types – Design Review. A local government decision granting design review plan approval must identify the design review plan approved. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

31.2.3 Permits – Types – Design Review. Where ORS 215.416(3) and (11) require a county to provide an opportunity for a local appeal of a design review decision made by the planning director without a hearing, the county cannot interpret a code provision requiring that "final design review approval" has been granted to be satisfied when a local appeal of the planning director's design review approval decision is pending. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).