32.2 Planned Unit Developments – Standards. LUBA will affirm a local government's interpretation of a planned unit development (PUD) standard prohibiting "clear-cutting" of trees, that trees that must be removed for siting individual dwellings will be evaluated at the time of building permit application, not as part of the PUD approval, where the standard does not explicitly require evaluation of trees removed for dwellings, and it is impossible to determine at the time of PUD approval which trees must be removed for dwellings. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

32.2 Planned Unit Developments – Standards. Whether language in a purpose statement of a land use regulation functions as an approval criterion or imposes additional affirmative duties on the local government in approving or denying proposed development depends on the text and context of that language. A prohibition in a recreational commercial zone purpose statement on "traditional residential uses" unless such uses are "necessary to support the primary recreationally-oriented uses" imposes an affirmative obligation on the local government in approving residential development in the zone. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

32.2 Planned Unit Developments – Standards. Where the county code allows modification of any standards applied to a planned unit development, the county may modify any such standards, even city street width standards that are applied pursuant to county code. *Didzun v. Lincoln County*, 51 Or LUBA 19 (2006).

32.2 Planned Unit Developments – Standards. A county code provision that allows "modification" of any standard applied to a planned unit development allows modification not only of numerical standards such as street width, but also modification of standards that prohibit certain features, such as double frontage lots. *Didzun v. Lincoln County*, 51 Or LUBA 19 (2006).

32.2 Planned Unit Developments – Standards. LUBA will affirm a governing body's interpretation allowing residential units within a "recreational planned unit development," notwithstanding that "residential uses" are prohibited in the underlying zone, where the zone nonetheless allows a recreational planned unit development, and the code definition of that term includes residential units as a core component. *Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1 (2005).

32.2 Planned Unit Developments – Standards. 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).

32.2 Planned Unit Developments – Standards. The requirements of OAR 660-012-0060 only apply to amendments "to functional plans, acknowledged comprehensive plans and land use regulations." Where a city took separate actions to approve a master plan of development and to amend its comprehensive plan to conform to the master plan of development and petitioners only appealed the master plan of development approval decision to LUBA, the requirements of OAR 660-012-0060 did not apply to the only decision that was before LUBA in that appeal. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

32.2 Planned Unit Developments – Standards. Where an applicant's expert and the United States Fish and Wildlife Service disagree about the adequacy of the expert's survey of endangered western lilies on the site of a proposed development, LUBA will defer to the city's choice to believe the applicant's expert. While the United States Fish and Wildlife Service may ultimately prevail in future federal permitting proceedings, a city's choice between conflicting testimony at the city's master plan of development approval stage presents no basis for reversal or remand. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

32.2 Planned Unit Developments – Standards. A local government is within its discretion under ORS 197.829(1) to interpret a planned unit development regulation requiring protection of "public safety" on sites with natural hazards "through clustering of development" on that portion of the site suitable for development as not requiring consideration of off-site impacts of proposed development. *Dinges v. City of Oregon City*, 49 Or LUBA 376 (2005).

32.2 Planned Unit Developments - Standards. A city code that requires planned development proposals to preserve trees "to the greatest degree possible" does not require that the applicant fundamentally change the nature of the application to maximize tree preservation. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

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

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

32.2 Planned Unit Developments – Standards. A local planned unit development (PUD) requirement that development preserve "significant on-site resources" and "worthwhile natural features" does not impose an absolute requirement that significant vegetation and other natural resources must be preserved in all cases. A local government does not commit error by balancing such preservation requirements with other code

requirements and explaining why in some cases the preservation requirement is sacrificed to achieve other code requirements. *Dept. of Transportation v. City of Eugene*, 38 Or LUBA 814 (2000).

32.2 Planned Unit Developments – Standards. When the local government cannot show that a comprehensive plan policy requiring site-specific soil surveys and geologic studies when potential geologic problems exists is couched in mandatory terms and absent some indication that it has been fully implemented in the zoning code, the policy is decisional criteria for development applications. *Highland Condominium Assoc. v. City of Eugene*, 37 Or LUBA 13 (1999).

32.2 Planned Unit Developments – Standards. A finding that a proposed planned unit development will "reduce" site disturbance is inadequate to demonstrate compliance with a standard that requires that the proposed development shall be designed to avoid unnecessary site disturbance. *Salo v. City of Oregon City*, 36 Or LUBA 415 (1999).

32.2 Planned Unit Developments – Standards. LUBA will not exercise its authority under ORS 197.835(11)(b) to affirm a decision notwithstanding inadequate findings, where the local government fails to adopt findings of compliance with a criterion requiring that planned unit development be designed to minimize the number and size of cuts and fills, and it is not obvious from evidence in the record that the PUD design minimizes cuts and fills. *Salo v. City of Oregon City*, 36 Or LUBA 415 (1999).

32.2 Planned Unit Developments – Standards. Where a local code provision requires that a proposed planned unit development employ progressive site designs that reduce major alterations of the site and the project by its nature does not require any major alterations to the site, the local provision is satisfied without a further finding that the project employs a progressive site design. *Hard Rock Enterprises v. Washington County*, 36 Or LUBA 106 (1999).

32.2 Planned Unit Developments – Standards. Where the applicant for a planned unit development proposes to use an area to satisfy both open space and water quality facility requirements, and petitioner and a staff report raise concerns below that the proposed open space fails to comply with approval standards because it is unusable for any purpose other than for drainage, the county must adopt findings addressing that issue. *Hard Rock Enterprises v. Washington County*, 36 Or LUBA 106 (1999).

32.2 Planned Unit Developments – Standards. Where a local government's modification of standards applicable to a planned unit development rests on independent alternative grounds, petitioner's demonstration of error in one alternative ground provides no basis to reverse or remand the challenged decision where petitioner fails to challenge the other alternative ground. *Hard Rock Enterprises v. Washington County*, 36 Or LUBA 106 (1999).

32.2 Planned Unit Developments – Standards. A requirement that off-street parking be located "on or within 100 feet of the site of the primary use" is satisfied where the proposed off-street parking is not associated with individual dwellings within a proposed

planned unit development, but is additional parking associated with the project as a whole. In that circumstance, the “site of the primary use” is the project as a whole, and the additional off-street parking need not be located within 100 feet of each individual dwelling. *Hard Rock Enterprises v. Washington County*, 36 Or LUBA 106 (1999).

32.2 Planned Unit Developments – Standards. Where a PUD condition of approval requires that certain issues be resolved prior to preliminary plat approval of Phase 7 of the PUD, LUBA will affirm as reasonable and correct a city’s interpretation of that condition to allow Phase 7A to be approved in advance of Phase 7B without resolving those issues. *Claus v. City of Sherwood*, 35 Or LUBA 437 (1999).

32.2 Planned Unit Developments – Standards. LUBA will not consider arguments that a city erred in approving a modified PUD Master Plan, where the LUBA appeal challenges a preliminary plat decision that is subject to the previously approved PUD Master Plan and petitioner does not appeal a separate city decision that modifies the PUD Master Plan. *Claus v. City of Sherwood*, 35 Or LUBA 437 (1999).

32.2 Planned Unit Developments – Standards. Where preliminary subdivision and PUD approval is not modified, approval of the final subdivision and PUD plans is governed by the standard in effect when the application for preliminary approval was submitted. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

32.2 Planned Unit Developments – Standards. A code requirement that deeds to property in a PUD shall stipulate that no "private structure of any type" shall be constructed in common areas does not apply to and does not prohibit construction of drainfields by the "developer" in common areas. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

32.2 Planned Unit Developments – Standards. Where a code requires that the final subdivision and PUD plans be in "substantial conformance" with the preliminary approval and the city interprets the "substantial conformance" requirement by analogizing to the distinction drawn in the code between "major" subdivision/PUD amendments, which must be approved quasi-judicially, and "minor" amendments, which may be approved administratively, the city’s interpretation will be upheld. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

32.2 Planned Unit Developments – Standards. LUBA will not defer to city's interpretation that a city code requirement for "usable outdoor recreation space * * * for the shared or common use of all the residents" is satisfied by balconies or by private patios and decks, where the code requires that such balconies, patios and decks be "designed to provide privacy." *Dodds v. City of West Linn*, 33 Or LUBA 470 (1997).

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

32.2 Planned Unit Developments – Standards. Allowing both the reconfiguration of zoning districts and density transfers is consistent with the concept of "floating zones," which are intended to promote flexibility in master planning. *Huntzicker v. Washington County*, 30 Or LUBA 397 (1996).

32.2 Planned Unit Developments – Standards. The provisions of ORS 358.920 to 358.950 and 97.740 to 97.760 concerning excavation of archaeological sites are not approval standards a local government must address in approving a planned development, so long as the local government does not approve the planned development in a way that obviates the applicant's responsibility to comply with those statues, without demonstrating (1) the statutes do not apply to the excavation or construction that may be carried out under the challenged decision, or (2) the statutory requirements have been met. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

32.2 Planned Unit Developments – Standards. LUBA will defer to a local government's interpretation of a code requirement, that a PUD tentative plan covering a portion of property under single ownership be accompanied by a statement proving the entire property can be developed and used in accord with code standards, as requiring that the PUD not render the remainder of the property undevelopable. *McGowan v. City of Eugene*, 26 Or LUBA 9 (1993).

32.2 Planned Unit Developments – Standards. That a proposed partition of land within a PUD may violate private covenants, conditions and restrictions, provides no basis for reversal or remand of a challenged land use decision. *Long v. Marion County*, 26 Or LUBA 132 (1993).

32.2 Planned Unit Developments – Standards. Local code provisions which simply allow increased density for controlled income and rent housing do not eliminate the requirement that such housing comply with other requirements of the local code. *Langford v. City of Eugene*, 26 Or LUBA 60 (1993).

32.2 Planned Unit Developments – Standards. Findings supporting approval of a PUD that determine there are solutions available to various landslide, drainage and related problems affecting the subject property, and that those solutions are possible, likely and reasonably certain to succeed, are adequate to establish that the local government did not improperly defer compliance with relevant PUD standards. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

32.2 Planned Unit Developments – Standards. Determining compatibility is inherently subjective. Where there is conflicting believable evidence concerning a proposed PUD's compatibility with the surrounding neighborhood, LUBA will not disturb the local government's determination that the height of the proposed buildings is compatible with the surrounding neighborhood. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

32.2 Planned Unit Developments – Standards. Where a code chapter prohibiting vegetation disturbance in certain areas allows activities authorized by a land use decision made before the effective date of the chapter, the local government may interpret the code to allow activities authorized under a newly amended PUD development plan, if those *same* activities where authorized under an original PUD development plan approved prior to the effective date of the code chapter. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

32.2 Planned Unit Developments – Standards. Where a local code allows approval of a rural planned development (RPD) "in conjunction with" a land division, and establishes comprehensive standards for RPDs, including standards for lot line adjustments in an approved RPD, the local government's interpretation of a code provision allowing revisions to an approved land division as giving it authority to approve lot line adjustments in an approved RPD which are not otherwise allowable under the RPD provisions, is clearly wrong. *Reusser v. Washington County*, 25 Or LUBA 252 (1993).

32.2 Planned Unit Developments – Standards. A local code may provide a PUD process in which an approved PUD overall development plan, rather than the comprehensive plan standards applied in approving the overall development plan, governs final PUD approval. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

32.2 Planned Unit Developments – Standards. As long as comprehensive plan issues relating to the impact of an entire PUD on internal and external roadways were addressed in approving an overall development plan, under applicable local code provisions particular questions concerning those issues that were not raised in granting overall development plan approval may not be raised during final PUD approval. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

32.2 Planned Unit Developments – Standards. Local government interpretations that particular PUD approval standards apply only at one stage of a multi-stage approval process will be sustained where the relevant code language supports that construction. However, LUBA will reject arguments that a local code should be interpreted in that manner, where the challenged decision does not interpret and apply the local code in that way and the local government's interpretation and application of its code is not clearly wrong. *DLCD v. Crook County*, 25 Or LUBA 98 (1993).

32.2 Planned Unit Developments – Standards. Where the challenged decision includes only a conclusory statement that detailed code criteria for PUD development plans are satisfied, and neither the decision itself nor the respondents' briefs explain how other findings addressing other code standards are adequate to demonstrate compliance with the PUD development plan criteria, LUBA cannot conclude the PUD development plan criteria are either satisfied or inapplicable to the subject proposal. *Davenport v. City of Tigard*, 25 Or LUBA 67 (1993).

32.2 Planned Unit Developments – Standards. Where a code provides that changes having significant impacts are major PUD amendments, and lists categories of changes that *might* result in significant impacts, whether a proposed amendment falls within a category on the list is not in itself determinative of whether the amendment is major. Because the categories are not independent bases for identifying a major amendment, a determination that a proposed PUD amendment is not major need not be supported by findings addressing each category. *Gage v. City of Portland*, 24 Or LUBA 47 (1992).

32.2 Planned Unit Developments – Standards. Where a county code contains a general PUD provision stating that individual lot size in PUDs is unrestricted, but is subsequently amended to include a prohibition against "flexible lot size developments" in a particular zone, the code is correctly interpreted to prohibit PUDs which would create individual lots smaller than the minimum lot size required by that particular zone. *Niedermeyer v. Clackamas County*, 23 Or LUBA 380 (1992).

32.2 Planned Unit Developments – Standards. A local code requirement for findings of preliminary PUD or subdivision plan feasibility does not require the kind of certainty or supporting evidence that may ultimately be required for approval of final construction plans. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

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

32.2 Planned Unit Developments – Standards. Under applicable city land use regulation definitions and general understanding the length of a cul-de-sac street is measured to the end of whatever turnaround is provided; not to the point at which the right of way widens to accommodate the turnaround. *Sully v. City of Ashland*, 23 Or LUBA 25 (1992).

32.2 Planned Unit Developments – Standards. A comprehensive plan standard establishing a minimum building site requirement of one acre is not inconsistent with plan and code requirements that subdivision lots in a zoning district allowing development at a density of one unit per five acres be clustered to provide not less than 30 percent common open space. Such a plan standard simply sets a minimum area requirement for each clustered lot. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

32.2 Planned Unit Developments – Standards. It is possible to interpret a comprehensive plan standard requiring that "the minimum percentage of common open space shall be 30 percent, excluding roads and property under water," as requiring that the exclusion apply (1) only to the lands subject to the open space requirement, (2) only to the lands that may be used to satisfy the open space requirement, or (3) to both. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

32.2 Planned Unit Developments – Standards. A local code definition of common open space as space to be "used, maintained and enjoyed by the owners and occupants of the individual building units" does not require that for all common open space the owners and occupants have physical access to "use" such common open space. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

32.2 Planned Unit Developments – Standards. A local code provision which establishes minimum requirements for what must be included in a PUD preliminary development plan application does not establish or modify the approval standards for such plans set forth elsewhere in the code. *Gilson v. City of Portland*, 22 Or LUBA 343 (1991).

32.2 Planned Unit Developments – Standards. Where the height limitation for the underlying zone is a standard applicable to approval of a PUD preliminary development plan, under ORS 227.178(3) the preliminary development plan must comply with the building height limitation in effect when the preliminary development plan application was first submitted. *Gilson v. City of Portland*, 22 Or LUBA 343 (1991).

32.2 Planned Unit Developments – Standards. Where the language employed in the purpose statement of a code PUD chapter evidences only what the local government intends the consequences of application of the specific provisions of that PUD chapter to be, the purpose statement does not establish independent approval standards for individual PUD applications. *White v. City of Oregon City*, 20 Or LUBA 470 (1991).

32.2 Planned Unit Developments – Standards. Under code provisions for two-stage approval of planned unit developments, the finding of "feasibility" required for first stage approval requires a finding that solutions to problems posed by the project are "possible, likely, and reasonably certain to succeed." Provided the required finding of "feasibility" is made at the first stage, where public hearings are provided, resolution of precise solutions and technical matters may occur as part of second-stage approval without additional public hearings. *Bartels v. City of Portland*, 20 Or LUBA 303 (1990).

32.2 Planned Unit Developments – Standards. Where the record of the local proceedings includes expert testimony identifying potential road and utility construction and fill problems and suggesting ways in which those problems may be resolved, the testimony is adequate to support a local government's findings that those aspects of a proposed planned unit development are "feasible." *Bartels v. City of Portland*, 20 Or LUBA 303 (1990).

32.2 Planned Unit Developments – Standards. Where a planned unit development is proposed on a site with steep slopes and unstable soils, unexplained expressions of confidence by experts concerning the feasibility of proposed residential construction are not sufficient to constitute substantial evidence supporting a finding that the proposed residential development is "feasible." This is particularly the case where the expert study primarily relied upon by the local government expressly states it does not address

feasibility of residential construction. *Bartels v. City of Portland*, 20 Or LUBA 303 (1990).

32.2 Planned Unit Developments – Standards. Where the local plan requires that the increased density and smaller lots allowed in a PUD be offset by the provision of "useable open space," such open space must benefit the entire PUD, and cannot consist of the oversize private front and rear yards of the larger lots. *Schryver v. City of Hillsboro*, 20 Or LUBA 90 (1990).

32.2 Planned Unit Developments – Standards. Where a local government requires property designated as a significant natural area on its Goal 5 inventory to be developed through its PUD process, and a comprehensive plan provision requires PUD development proposals "to address preservation of wildlife habitat and natural vegetation," the local government has made an OAR 660-16-010(3)(c) "limit conflicting uses" decision, and a decision approving a PUD on such property must be supported by findings demonstrating how wildlife habitat and natural vegetation will be preserved. *Schryver v. City of Hillsboro*, 20 Or LUBA 90 (1990).

32.2 Planned Unit Developments – Standards. Where the local code provides for the approval of an overall PUD development plan and allows approved PUDs to be developed in phases, and the local government addresses the public services impacts of an entire PUD and finds relevant plan policies satisfied in approving such an overall PUD plan, the local government is not required to readdress plan public services policies in subsequent approval of a development phase, provided the requested phase approval is consistent with the type and intensity of development in the approved overall PUD plan. *Hoffman v. City of Lake Oswego*, 20 Or LUBA 64 (1990).