

39.3 Boundary Changes – Annexation. Notwithstanding that the application for annexation and the application for a planned unit development (PUD) for a residential golf course were processed together, a city errs in denying the annexation application based not on the annexation criteria, but on the PUD criteria, and on concerns regarding the specific PUD proposal. Each application is subject to its own criteria, and where nothing in the city code authorizes the city to deny the annexation application based solely on noncompliance with PUD criteria, LUBA will remand the decision to the city to address the annexation criteria. *Tukwila Development LLC v. City of Woodburn*, LUBA No 2021-058 (Nov 5, 2021).

39.3 Boundary Changes – Annexation. ORS 222.127 prohibits a city from imposing a voter referral requirement on an annexation covered by the statute but does not otherwise restrict the criteria that the city would apply to the annexation. *Caldwell Farms, LLC v. City of Corvallis*, 81 Or LUBA 348 (2020).

39.3 Boundary Changes – Annexation. Under the “island annexation” statute, ORS 222.750, which authorizes a city to annex territory that is not within the city but that is surrounded by the city’s boundaries without the affected property owners’ consent, a city may include phased annexation effective dates in its annexation proclamation, even if, as a consequence, part of the annexed territory will abut land that is not within the city on the effective date of its annexation. *WKL Investments Airport, LLC v. City of Lake Oswego*, 80 Or LUBA 310 (2019).

39.3 Boundary Changes – Annexation. A city councilor’s social media communications with constituents regarding an application for an annexation pending before the city council are *ex parte* communications that must be disclosed under ORS 227.180(3). *JAJ Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

39.3 Boundary Changes – Annexation. Where during deliberations on an application for an annexation under a new state statute, a city councilor mentions a city attorney letter discussing the costs of joining litigation to challenge the statute, the letter is exempt from disclosure as an *ex parte* communication under ORS 227.180(4), and the city commits no procedural error in failing to include the letter in the record of the annexation proceeding. *JAJ Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

39.3 Boundary Changes – Annexation. Where city procedure on an annexation proposal provides a first evidentiary hearing before the planning commission, followed by a second evidentiary hearing before the city council, the planning commission hearing is the “initial evidentiary hearing” for purposes of ORS 197.763(6)(a), which requires the local government to grant a request for a continuance or open record period that is made prior to the conclusion of the initial evidentiary hearing. The local government is not required to grant such a request made at subsequent evidentiary hearings. *JAJ Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

39.3 Boundary Changes – Annexation. A finding that city streets have adequate capacity to accommodate traffic generated on annexed land is not supported by substantial evidence, where the finding cites and relies only upon extra-record street capacity data found in the transportation system plans of three nearby cities, rather than any evidence in the record. *JAJ Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

39.3 Boundary Changes – Annexation. Findings regarding the adequacy of urban services to serve annexed property are inadequate, where the findings cite only hearsay statements from providers, and fail to address issues raised below regarding delayed response times to service the subject property and an engineer’s testimony that the electrical system cannot serve the property without impacting other portions of the city. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

39.3 Boundary Changes – Annexation. Under an annexation requirement that the city must find that “sufficient planning and engineering data is available” and “all necessary studies and reviews have been completed such that there are no unresolved issues,” a city’s conclusory finding of compliance is inadequate in the face of detailed and unrebutted testimony that studies are required regarding impacts of proposed development on traffic, pedestrian and bicycle facilities, storm water drainage, flooding, electrical infrastructure, and emergency access. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

39.3 Boundary Changes – Annexation. It would be inconsistent with sound principles of judicial review, ORS 197.805, for LUBA to resolve a constitutional challenge to the procedure a city uses to approve an annexation, in a direct appeal of the city decision approving the annexation, when the same issue is pending before a circuit court in a writ of mandamus proceeding between the same parties, seeking to compel the city to approve the annexation under a different procedure. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

39.3 Boundary Changes – Annexation. A city is not obligated to apply city plan and zoning designations to the annexed portion of a county road where the county road did not have a county plan and zoning designation prior to annexation. *Altamont Homeowners’ Assoc., Inc. v. City of Happy Valley*, 73 Or LUBA 126 (2016).

39.3 Boundary Changes – Annexation. Where the challenged decision annexed both a parcel and a portion of a county road, and the notice of public hearing that the city provided described the application for annexation as including only the parcel and did not reference in any way the portion of the county road that was annexed, the notice of public hearing did not reasonably describe the city’s final action, and ORS 197.835(4)(b) allows petitioner to raise new issues. *Altamont Homeowners’ Assoc., Inc. v. City of Happy Valley*, 73 Or LUBA 126 (2016).

39.3 Boundary Changes – Annexation. A city errs in approving an annexation request under ORS 222.125 without receiving the written consent of all owners of property in the territory to be annexed. *Altamont Homeowners’ Assoc., Inc. v. City of Happy Valley*, 73 Or LUBA 126 (2016).

39.3 Boundary Changes – Annexation. The “separated by a right of way” criterion in ORS 222.111(1) does not apply where a city annexes both a parcel and the road connecting the parcel to the city limits. *Altamont Homeowners’ Assoc., Inc. v. City of Happy Valley*, 73 Or LUBA 126 (2016).

39.3 Boundary Changes – Annexation. The shape of a parcel alone does not demonstrate that the annexation is unreasonable under the “reasonableness” test that was first employed by the

Oregon Supreme Court in *Portland Gen. Elec. Co. v. City of Estacada*, 194 Or 145, 241 P2d 1129 (1952). *Altamont Homeowners' Assoc., Inc. v. City of Happy Valley*, 73 Or LUBA 126 (2016).

39.3 Boundary Changes – Annexation. Where a local government adopts alternative findings to address disjunctive statutory requirements for annexation, any inconsistency between the alternative findings is not a basis for remand. *Oregon Coast Alliance v. City of Brookings*, 71 Or LUBA 14 (2015).

39.3 Boundary Changes – Annexation. ORS 222.750(5) requires that annexation of “property that is zoned for * * * residential use” must be delayed for at least three years” from the date of approval. Property is zoned for residential use, within the meaning of ORS 222.750(5), if the applicable zone allows residences as a permitted use. *Knaupp v. City of Forest Grove*, 67 Or LUBA 398 (2013).

39.3 Boundary Changes – Annexation. A zoning ordinance standard that requires that zoning map amendments must be consistent with relevant comprehensive plan policies provides no basis for reversal or remand, where petitioners appealed an annexation ordinance and failed to appeal the ordinance that rezoned the annexed properties. *Knaupp v. City of Forest Grove*, 67 Or LUBA 398 (2013).

39.3 Boundary Changes – Annexation. A city is not required to apply Goal 5 to a decision to annex property, where the annexation decision does not change the county planning and zoning designations of the property and does not make any of the changes specified in OAR 660-023-0250(3)(a) to (c) that would require application of Goal 5. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

39.3 Boundary Changes – Annexation. Where petitioner makes no attempt to identify specific or general vacation rental dwelling licensing requirements that might have Goal 9 implications, and any Goal 9 impacts of applying those licensing requirements to annexed property appear to be highly speculative and indirect, LUBA will reject petitioner’s argument that it was error for the city to fail to adopt findings addressing Goal 9 to support its legislative annexation decision. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

39.3 Boundary Changes – Annexation. A legislative annexation decision that leaves existing county comprehensive plan and land use regulations in place, including county residential comprehensive plan and zoning map designations, does not implicate Goal 10. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

39.3 Boundary Changes – Annexation. Where a city has made it clear in its comprehensive plan and in dealings over the years with a water district and a sanitary district that as a condition of the city providing city water and sewer services to water and sanitary district customers the properties receiving such services would have to annex to the city in the future, and the districts have no plans to provide water or sewer service to the disputed area, the city’s decision to annex and withdraw that territory from the districts was adequately coordinated under Goal 2, although the city and the districts may dispute the desirability of that annexation. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

39.3 Boundary Changes – Annexation. General expressions of support or opposition to a proposed annexation are not *ex parte* contacts within the meaning of ORS 227.180(3), because they include no factual or legal assertions that bear on approval criteria or on any issue material to approval of the annexation that could possibly be rebutted. *Link v. City of Florence*, 58 Or LUBA 348 (2009).

39.3 Boundary Changes – Annexation. ORS 222.120, which permits cities to dispense with an election on a proposed annexation and instead hold a public hearing, does not require cities to decide, on a case-by-case basis, whether to dispense with an election. It is consistent with the statute for the city to adopt a general resolution providing that the city elects to dispense with all annexation elections and to rely on that resolution to dispense with all future annexation elections. *Link v. City of Florence*, 58 Or LUBA 348 (2009).

39.3 Boundary Changes – Annexation. While an annexation must be made in compliance with a city’s acknowledged comprehensive plan, no statute or administrative rule requires that in annexing territory the city must contemporaneously amend its comprehensive plan map to depict the new city boundaries. *Link v. City of Florence*, 58 Or LUBA 348 (2009).

39.3 Boundary Changes – Annexation. A decision annexing new territory to a city in order to extend city sewer to the new territory is not a “modification” of a project in a public facilities plan for purposes of the Goal 11 rule, and therefore OAR 660-011-0045 does not require an amendment to the public facilities plan, where the annexation decision does not make any modification to existing sewer projects in the plan or make any decisions regarding such projects. *Link v. City of Florence*, 58 Or LUBA 348 (2009).

39.3 Boundary Changes – Annexation. A city governing body does not err in interpreting comprehensive plan policies that govern “development” to be inapplicable to a proposal to annex and extend sewer service to fully developed property. *Link v. City of Florence*, 58 Or LUBA 348 (2009).

39.3 Boundary Changes – Annexation. Under ORS 222.111(1) a city may annex territory that is (1) contiguous to the city or (2) separated from the city only by a public right-of-way or body of water. Where the city annexes both territory and a public right-of-way that connects the city and the territory, that annexation territory as a whole is “contiguous” to the city and therefore the city need not rely on the “separated by a public right of way” element of ORS 222.111. *Link v. City of Florence*, 58 Or LUBA 348 (2009).

39.3 Boundary Changes – Annexation. That an annexation may ultimately lead to a city extending sewer service to urbanizable lands along a different route than contemplated in the city’s public facilities plan does not demonstrate that the annexation is “unreasonable” under *Portland Gen. Elec. Co. v. City of Estacada*, 194 Or 145, 241 P2d 1129 (1952). *Link v. City of Florence*, 58 Or LUBA 348 (2009).

39.3 Boundary Changes – Annexation. Where a city readopts an earlier land use decision that authorized an election on a proposed annexation so that the proposed annexation would be sent to

the voters for a second time, petitioners are entitled to challenge that readopted land use decision at LUBA, notwithstanding that an earlier LUBA appeal of the first land use decision was dismissed as moot after the voters rejected the annexation proposal. But where the voters reject the proposed annexation at the second election, before LUBA issues its decision on the merits, the second appeal must also be dismissed as moot. *Kehoe v. City of Oregon City*, 58 Or LUBA 552 (2009).

39.3 Boundary Changes – Annexation. ORS 197.752(1) does not mandate that all urban services and facilities must be available to a property at the time of annexation. *Bowler v. City of Cave Junction*, 56 Or LUBA 152 (2008).

39.3 Boundary Changes – Annexation. A regional government code provision that requires local government comprehensive plans to include a legal requirement that property be annexed before the property is allowed to urbanize has no bearing on whether a local government may annex property before completing legally required concept planning for the annexed area. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

39.3 Boundary Changes – Annexation. A city comprehensive plan policy that a concept plan should be adopted to guide zoning does not require that the concept plan be adopted before the property that will be the subject of that concept plan can be annexed. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

39.3 Boundary Changes – Annexation. A city does not err by interpreting a comprehensive plan policy that requires the city to “annex lands to the city through a process that considers the effects on public services” to allow it to defer such consideration to an ongoing but unfinished concept planning process where: (1) the concept plan will precede actual urbanization of the annexed areas, (2) the plan will provide the basis for planning and zoning of annexed areas for urban development, and (3) the concept plan will determine how public facilities are extended to annexed areas as they urbanize. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

39.3 Boundary Changes – Annexation. A city does not err by interpreting a code requirement that “adequacy and availability of public facilities and services” be “considered” as a “factor” in reviewing annexation proposals to allow it to defer needed public facility planning to an ongoing but incomplete concept planning process where: (1) annexation, in and of itself, authorizes no additional urban development of the annexed property, (2) no urban development of the annexed property could be allowed under the zoning that will remain in place following annexation, (3) no urban development would be allowed until the concept plan is adopted to allow urbanization of the annexed area, and (4) the concept plan will be required to address the public facilities and services that will be needed for urbanization of the annexed area. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

39.3 Boundary Changes – Annexation. A city may rezone property prior to annexation, so long as the effective date of the rezoning is delayed until the date the property is annexed. *Citizens Against Annexation v. City of Florence*, 55 Or LUBA 407 (2007).

39.3 Boundary Changes – Annexation. The property owner has the burden of proof to establish that it qualifies for the statutory prohibition against nonconsensual annexation provided by Oregon

Laws 1987, chapter 737, section 3. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

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

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

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

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

39.3 Boundary Changes – Annexation. The ORS 222.750 statutory authority for annexing islands of unincorporated land surrounded by cities or water or a combination of cities and water does not require that the entire island be annexed at one time. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

39.3 Boundary Changes – Annexation. Where the Metro Code provides that when a necessary party appeals a city boundary change decision to Metro the city boundary change decision is not final until the appeal is resolved, LUBA does not have jurisdiction to review that city boundary change decision while the Metro appeal is pending, because LUBA’s review jurisdiction is limited to “final” decisions. *City of Happy Valley v. City of Damascus*, 51 Or LUBA 141 (2006).

39.3 Boundary Changes – Annexation. Under Oregon Supreme Court precedent, a city “institutes” annexation proceedings, and thereby secures jurisdiction to complete that annexation proceeding to the exclusion of other municipal bodies, when it adopts a resolution that sets a date for a public hearing on the proposed annexation. *City of Damascus v. City of Happy Valley*, 51 Or LUBA 150 (2006).

39.3 Boundary Changes – Annexation. An urban growth management agreement between a city and county that identifies an area of interest for city annexation and provides that the county will not oppose city annexations in that area of interest is not sufficient to “institute” annexation so that other cities that are not a party to the urban growth management agreement would be precluded

from instituting annexation within that area of interest. *City of Damascus v. City of Happy Valley*, 51 Or LUBA 150 (2006).

39.3 Boundary Changes – Annexation. City voter approval of a measure that waives a city charter requirement for a city vote on annexation proposals for five years in a designated area is not sufficient to “institute” annexation proceedings in that area so that other cities would be precluded from instituting annexation proposals in that same area. *City of Damascus v. City of Happy Valley*, 51 Or LUBA 150 (2006).

39.3 Boundary Changes – Annexation. LUBA need not decide whether receipt of petitions and consents to annexation is sufficient to “institute” annexation proceedings, and thereby preclude other cities from attempting to annex those properties until the city receiving the petitions and consents can complete its annexation proceedings, where another city “initiated” annexation proceedings before the petitions and consents were filed with the first city. *City of Damascus v. City of Happy Valley*, 51 Or LUBA 150 (2006).

39.3 Boundary Changes – Annexation. An acknowledged city code provision that replaces county comprehensive plan and zoning designations with functionally equivalent city comprehensive plan and zoning designations upon annexation may dramatically reduce the city’s obligation to address the statewide planning goals when annexing property. But the new city comprehensive plan and zoning designations may not be sufficient to maintain statewide planning goal requirements where special purpose county planning and zoning requirements are repealed by annexation and special purpose city planning and zoning are not made applicable by the annexation. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

39.3 Boundary Changes – Annexation. There is no overarching “informed consent” requirement under ORS 222.170, as such. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

39.3 Boundary Changes – Annexation. A consent to annexation under ORS 222.120(4) and 222.170 that is obtained by multiple material misrepresentations would be of questionable validity. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

39.3 Boundary Changes – Annexation. Where a city is authorized under agreements with a county and water district to provide planning and water service in certain areas near the city, the city is properly viewed as the provider of those services and can withhold services from properties unless the property owners consent to annexation and sign a contract to that effect under ORS 222.115. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

39.3 Boundary Changes – Annexation. A city’s mistaken understanding of the legal effect of a development code provision upon annexation is not a material misrepresentation of fact or law that would call into question the validity of consents to annexation that were given based on that understanding. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

39.3 Boundary Changes – Annexation. ORS 222.111 provides two ways to initiate city annexation of contiguous territory. The city’s legislative body may initiate annexation on its own

motion, and the owner of real property in the territory to be annexed may initiate such annexations. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. With several exceptions, ORS 222.111(5) requires that the city council submit the proposed annexation to (1) the voters of the city and (2) the voters living in the area to be annexed. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. Once a city initiates an annexation under ORS 222.111, unless a city’s charter requires a vote by city voters on a proposed annexation, the city council may simply dispense with submitting the proposed annexation to the city voters and instead schedule a public hearing on the annexation. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. While an ordinance or resolution that approves an island annexation pursuant to ORS 222.750 is subject to referendum, a prior vote by the city electorate or by the voters in the annexed territory is not required. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. ORS 222.840 to 222.915, which authorize city annexations to abate health hazards, do not require approval of such annexations by city voters or by the voters in the territory to be annexed. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. Under ORS 222.125, if a double majority consisting of (1) all the owners of land in the territory to be annexed and (2) 50 percent of the electors in that territory consent to a proposal to annex contiguous territory, no election is required in either the city or the territory to be annexed. ORS 222.170(2) authorizes a second type of double majority annexation (majority of electors and majority of landowners in the area to be annexed), under which an election within the territory to be annexed is not necessary. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. Under ORS 222.170(1), a city may annex contiguous territory without an election in the area to be annexed if a triple majority of “more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation.” *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. There is no right under either the federal or Oregon constitution to vote on questions of incorporation or annexation. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. Where a right to vote in a general election is extended by statute, any classification restricting that franchise on grounds other than residence, age, and citizenship must be shown to serve a compelling state interest. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. In analyzing annexation statutes, if those statutes are viewed as restricting a statutory right to vote, strict scrutiny is generally applied under the Equal Protection Clause; but if those statutes are viewed as merely presenting alternative annexation methods, where some provide for elections and some do not, rational basis scrutiny is generally applied under the Equal Protection Clause. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. The more clearly and cleanly statutes that authorize different annexation methods segregate the annexation methods that do not require elections from those that do, the more likely the statutes will not be subject to strict scrutiny as statutes that restrict voting rights. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. When statutes do not make it clear at the time an annexation is initiated whether the annexation will ultimately be subject to an election before the annexation can take effect, or the statutes appear to grant a right to vote on an annexation but also allow the election to be foreclosed at some later point in the annexation process, those statutes are likely to be subject to strict scrutiny under the Equal Protection Clause as statutes that restrict voting rights. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. The right to an election that ORS 222.111(5) grants is not an absolute right. There is no right to vote in health hazard, double majority, island or triple majority annexations. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. Unlike annexation statutes that have been subject to strict scrutiny and found to violate the Equal Protection Clause as an improper restriction on voting rights, the triple majority method of annexation authorized by ORS 222.170(1) does not have the legal effect of “nullifying a vote,” “preventing an election” or “halting an election.” ORS 222.170(1) simply makes an election unnecessary; it does not foreclose an election or prohibit the city from submitting the proposed annexation to the voters in the territory to be annexed, notwithstanding that a triple majority of the property owners in the territory to be annexed consent to the annexation. *Morsman v. City of Madras*, 50 Or LUBA 1 (2005).

39.3 Boundary Changes – Annexation. A city does not misinterpret the term “surrounded” for purposes of determining whether certain annexations qualify as “island” annexations pursuant to ORS 222.750, where the city chooses to annex only part of the unincorporated territory within the island. *Costco Wholesale Corporation v. City of Beaverton*, 50 Or LUBA 476 (2005).

39.3 Boundary Changes – Annexation. A city’s decision to annex property as an “island” annexation pursuant to ORS 222.750 is supported by substantial evidence although the record does not include ordinances approving previous annexations, or an explanation of how the territories being annexed are “surrounded” under ORS 222.750, where the record includes an annexation map depicting the city limits and the previously annexed properties that create the island. *Costco Wholesale Corporation v. City of Beaverton*, 50 Or LUBA 476 (2005).

39.3 Boundary Changes – Annexation. A city’s annexation of unincorporated territory within an “island” is reasonable, for purposes of the “reasonableness” test under *Portland Gen. Elec. Co. v. City of Estacada*, 194 Or 145, 241 P2d 1129 (1952), where the city has a policy to ultimately annex

all of the territory identified in its “urban services area,” and the territory to be annexed falls within that urban services area. *Costco Wholesale Corporation v. City of Beaverton*, 50 Or LUBA 476 (2005).

39.3 Boundary Changes – Annexation. OAR 660-014-0060 requires that local governments apply acknowledged comprehensive plans and ordinances to annexation decisions in lieu of the statewide planning goals, unless the plan and ordinance do not “control the annexation.” A comprehensive plan policy need not be a mandatory approval criterion to “control the annexation” for purposes of OAR 660-014-0060; it is sufficient that the policy provides relevant guidance with respect to annexations. *Costco Wholesale Corporation v. City of Beaverton*, 50 Or LUBA 476 (2005).

39.3 Boundary Changes – Annexation. Where two cities have both adopted ordinances annexing the same property and both of those ordinances have been appealed to LUBA, some jurisdictional uncertainty is unavoidable until those appeals are completed. That temporary uncertainty does not amount to a substantial or unreasonable injury that justifies a stay of the annexation ordinance in one of the LUBA appeals. *City of Happy Valley v. City of Damascus*, 50 Or LUBA 711 (2005).

39.3 Boundary Changes – Annexation. A finding that annexation is necessary to protect significant natural features on a site under more protective city regulations is a sufficient explanation for why there is a “public need” annexation, notwithstanding a plan policy indicating a preference for infill and redevelopment over annexation. No amount of infill or redevelopment could preserve significant natural features on the site. *Mason v. City of Corvallis*, 49 Or LUBA 199 (2005).

39.3 Boundary Changes – Annexation. A comprehensive plan policy stating that the city should “work toward” development of vacant lands before annexing additional lands does not mandate anything and therefore is not an approval standard governing an annexation proposal. *Kingsley v. City of Sutherlin*, 49 Or LUBA 242 (2005).

39.3 Boundary Changes – Annexation. ORS 222.750, which allows a city to annex an “island” of territory without consent or a vote of the residents or landowners within the island, does not distinguish between classes of persons based on a “suspect” classification, for purposes of Article I, section 20 (Privileges and Immunities), of the Oregon Constitution. Therefore, the statute must be upheld if the differential treatment between persons residing or owning property within such islands and those residing or owning property in other types of unincorporated territory has a “rational basis,” *i.e.*, bears some relationship to a legitimate end. *Kane v. City of Beaverton*, 49 Or LUBA (512).

39.3 Boundary Changes – Annexation. Reducing jurisdictional confusion and administrative and service inefficiencies created by “islands” of unincorporated territory surrounded by a city are legitimate legislative ends. A statute that makes it easier to incorporate such islands by eliminating the requirement to obtain the consent or electoral majority of residents or landowners within such islands furthers those legislative ends, and therefore the statute survives rational basis scrutiny under Article I, section 20 (Privileges and Immunities), of the Oregon Constitution. *Kane v. City of Beaverton*, 49 Or LUBA (512).

39.3 Boundary Changes – Annexation. It is entirely reasonable for a city to annex territory for which it has assumed, or obligated itself to assume, the responsibility of providing and maintaining urban services, for purposes of the “reasonableness” test under *Portland Gen. Elec. Co. v. City of Estacada*, 194 Or 145, 241 P2d 1129 (1952), even if city urban services are no better than the services the county provides. *Kane v. City of Beaverton*, 49 Or LUBA (512).

39.3 Boundary Changes – Annexation. Arguments that an “island” annexation under ORS 222.750 must be remanded because the record does not include consents necessary to establish the validity of previous annexations that rendered the subject area an “island” are essentially collateral attacks on annexation decisions not before the Board, and therefore do not provide a basis for reversing or remanding the challenged island annexation. *Kane v. City of Beaverton*, 49 Or LUBA (512).

39.3 Boundary Changes – Annexation. While ORS 222.750 allows a city to annex an “island,” defined as unincorporated territory that is surrounded by city limits or city limits and a body of water, it does not require the city to annex all of the island in one decision, and the city’s choice to annex only a part of the island does not disqualify the city from proceeding under ORS 222.750. *Kane v. City of Beaverton*, 49 Or LUBA (512).

39.3 Boundary Changes – Annexation. A resolution adopted pursuant to ORS 222.111(2) to initiate annexation proceedings that sets a date for an election in the area to be annexed, but dispenses with a separate vote within the city to approve the annexation, is not the city’s “final” decision regarding the annexation, and for that reason such a resolution is not a land use decision. Following adoption of such a resolution, ORS 222.120(4) requires that the city provide a public hearing and thereafter the city must adopt an ordinance to declare that the territory is annexed provided a majority of voters in the territory to be annexed approve. *City of Happy Valley v. City of Damascus*, 49 Or LUBA 553 (2005).

39.3 Boundary Changes – Annexation. Findings that an annexation area is adjacent to a long-developed urban neighborhood with full public services that can be readily extended to the annexed territory area are sufficient to demonstrate compliance with a code criterion requiring that “an adequate level of urban services and infrastructure is available or will be made available in a timely manner.” *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005).

39.3 Boundary Changes – Annexation. A city is not required to demonstrate that annexation of an open space area that includes Goal 5 resources is consistent with Goal 5, where the annexation decision does not rezone the area, amend the plan designation, or otherwise affect the uses allowed in the territory or the protection of open space and natural resources. *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005).

39.3 Boundary Changes – Annexation. Arguments that application of a city zoning district to an annexed area will conflict with Goal 12 are misdirected, where the challenged decision merely annexes the area but does not rezone it. *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005).

39.3 Boundary Changes – Annexation. A city’s desire to annex an island of unincorporated territory to reduce jurisdictional confusion and to ensure that those who benefit from city services share the cost of such services is sufficient to satisfy the requirement that annexations be “reasonable” and not arbitrary under *Portland Gen. Elec. Co. v. City of Estacada*, 194 Or 145, 241 P2d 1129 (1952). *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005).

39.3 Boundary Changes – Annexation. Under OAR 660-014-0060, which requires that local governments apply acknowledged comprehensive plans and ordinances to annexation decisions in lieu of the statewide planning goals, unless the plan and ordinance do not “control the annexation,” whether the plan and ordinances control the annexation depends on whether the plan and ordinances include substantive standards guiding a city’s determination whether or not to annex land, not whether the plan and ordinances include procedures specific to annexations. *Patterson v. City of Independence*, 49 Or LUBA 589 (2005).

39.3 Boundary Changes – Annexation. Which substantive comprehensive plan and ordinance standards that local governments apply to annexation decisions under OAR 660-014-0060 depend in part on the nature of the annexation. The considerations governing annexation of right-of-way will differ from those that govern annexation of a parcel for industrial, commercial or residential uses. *Patterson v. City of Independence*, 49 Or LUBA 589 (2005).

39.3 Boundary Changes – Annexation. Given the limited nature of a proposed annexation of a city-maintained right-of-way, comprehensive plan policies implementing Goals 12 and 14 that provide general guidance regarding annexation decisions are sufficient to “control the annexation” of the right-of-way for purposes of OAR 660-014-0060, and thus make it unnecessary to apply the goals directly. *Patterson v. City of Independence*, 49 Or LUBA 589 (2005).

39.3 Boundary Changes – Annexation. Annexation of a small stretch of city-maintained and city-patrolled road that begins and ends within city limits is clearly reasonable under the test in *Portland Gen. Elec. Co. v. City of Estacada*, 194 Or 145, 241 P2d 1129 (1952). *Patterson v. City of Independence*, 49 Or LUBA 589 (2005).

39.3 Boundary Changes – Annexation. Even if a local government could recognize partial parcel annexations as sufficient to legally divide a parcel, where a local lot of record code definition does not recognize partial parcel annexation as sufficient to legally divide the annexed portion of a parcel from the portion of a parcel that is not annexed, the annexation does not have the effect of dividing the parcel. *Masson v. Multnomah County*, 48 Or LUBA 100 (2004).

39.3 Boundary Changes – Annexation. A city correctly construes a policy that conditions connection to or extension of city water and sewer service upon annexation or consent to annexation not to prohibit the city from requiring consents to annexation in other circumstances. *Roads End Sanitary District v. City of Lincoln City*, 48 Or LUBA 126 (2004).

39.3 Boundary Changes – Annexation. A city-initiated annexation involving an area of 310 acres consisting of 97 parcels that is neither bound to result in a decision, nor an action directed at a closely circumscribed factual situation or relatively small number of persons is a legislative rather

than quasi-judicial decision under *Strawberry Hill 4 Wheelers v. Washington Co. Bd. of Comm.*, 287 Or 591, 601 P2d 769 (1979). *Cutsforth v. City of Albany*, 48 Or LUBA 304 (2004).

39.3 Boundary Changes – Annexation. A city does not err in failing to follow comprehensive plan amendment procedures in approving an annexation, where the annexation decision does not amend the city’s comprehensive plan. *Morsman v. City of Madras*, 47 Or LUBA 80 (2004).

39.3 Boundary Changes – Annexation. A city’s improper representation to property owners that they would only be entitled to phased-in city property taxes upon annexation if they signed a consent to annexation is not cured by the city’s subsequent decision to extend phased-in property taxation to all property owners in the annexed area, because it cannot be known whether those property owners would have consented to annexation if they knew their right to receive phased-in city property taxation would be unaffected by their decision not to sign a consent to annexation. *Morsman v. City of Madras*, 47 Or LUBA 80 (2004).

39.3 Boundary Changes – Annexation. Valuable promises to only some property owners of future planning and zoning upon annexation, as inducements to sign consents to annexation, constitute improper quid pro quos affecting the property owners’ constitutionally protected right to vote. *Morsman v. City of Madras*, 47 Or LUBA 80 (2004).

39.3 Boundary Changes – Annexation. A property owner’s consent to annex is not affected by a later decision to delete some of the territory proposed for annexation, because consents to annex are consents to annex the property owner’s property and are not dependent on annexation of the entire area that was originally proposed. *Morsman v. City of Madras*, 47 Or LUBA 80 (2004).

39.3 Boundary Changes – Annexation. Findings that address a city requirement that a proposed annexation must be a “natural extension” of city limits are adequate, where the findings explain that the area to be annexed will provide contiguity between existing city boundaries and commercially zoned property located outside city limits that will require annexation and the extension of urban services when they are developed. *West Side Rural F.P.D v. City of Hood River*, 46 Or LUBA 451 (2004).

39.3 Boundary Changes – Annexation. An amending order that merely corrects a property description included in a prior annexation order does not replace the prior order and therefore petitioners did not have to appeal the amending order rather than the prior order. *Miner v. Clatsop County*, 46 Or LUBA 467 (2004).

39.3 Boundary Changes – Annexation. A decision to annex property owned by more than 60 property owners and encompassing more than 125 acres is not directed at a “closely circumscribed factual situation” or “a relatively small number of persons,” and thus is not subject to notice requirements and hearing procedures prescribed by ORS 197.763 for a quasi-judicial land use decision. *Miner v. Clatsop County*, 46 Or LUBA 467 (2004).

39.3 Boundary Changes – Annexation. When a local code defines a “minor boundary change” as an annexation, a local government does not err in processing an annexation request as a “minor”

rather than “major” boundary change, regardless of the amount of territory being annexed. *Cape v. City of Beaverton*, 46 Or LUBA 750 (2004).

39.3 Boundary Changes – Annexation. When a local code does not require a public hearing, the fact that public officials from other local governments request additional procedures does not obligate a local government to provide additional procedures. *Cape v. City of Beaverton*, 46 Or LUBA 750 (2004).

39.3 Boundary Changes – Annexation. Annexation decisions are governed by comprehensive plan annexation criteria or, if no such comprehensive plan criteria have been adopted, by the statewide planning goals. Where a city annexation decision is adopted without applying either its comprehensive plan or the statewide planning goals, the decision must be remanded. *Morsman v. City of Madras*, 45 Or LUBA 16 (2003).

39.3 Boundary Changes – Annexation. A decision to annex adjacent industrially planned, zoned and developed land that includes the city’s airport and sewerage treatment plant is not unreasonable under *Portland Gen. Elec. Co. v. City of Estacada*, 194 Or 145, 241 P2d 1129 (1952). *Morsman v. City of Madras*, 45 Or LUBA 16 (2003).

39.3 Boundary Changes – Annexation. If a city makes valuable promises to property owners regarding future planning and zoning of their property that (1) are conditioned on their consent to annexation, and (2) are not extended to all other property owners in the annexed territory, such promises are impermissible under *Hussey v. City of Portland*, 64 F3d 1260 (9th Cir 1995). *Morsman v. City of Madras*, 45 Or LUBA 16 (2003).

39.3 Boundary Changes – Annexation. Findings that explain that a property’s locational characteristics are ideal to support airport-related light industrial uses and that other properties located within city limits are not as well suited for those uses are adequate to explain why an annexation is consistent with city annexation policies that require a demonstration that the annexation is “needed.” *Just v. City of Lebanon*, 45 Or LUBA 162 (2003).

39.3 Boundary Changes – Annexation. Neither Goal 11 nor Goal 14 identifies annexation or application of city zoning as the decision points at which (1) a specific development proposal must be approved and (2) any public service or facility inadequacies at the property must be corrected. *Just v. City of Lebanon*, 45 Or LUBA 179 (2003).

39.3 Boundary Changes – Annexation. ORS 197.752 and 197.754 concern the provision of public facilities to “urban development” located within urban growth boundaries. Those statutes do not mandate approval of a specific development proposal and provision of all urban services and facilities at the time of annexation and application of city zoning that would allow urban uses. *Just v. City of Lebanon*, 45 Or LUBA 179 (2003).

39.3 Boundary Changes – Annexation. Where a city annexation policy requires a demonstration that the annexation territory is “needed,” findings concluding that the territory to be annexed helps to address a 390-acre deficit in residential land are inadequate, where there is evidence that the city has a net 900-acre surplus of residentially zoned land within its UGB and there is no evidence

as to how much of that surplus is currently located within city limits. *Just v. City of Lebanon*, 45 Or LUBA 179 (2003).

39.3 Boundary Changes – Annexation. Where a city annexation policy requires that a development proposal accompany a request to annex vacant land “unless otherwise approved by the city,” and the city has a process where a development proposal may be considered and approved by the city prior to annexation, a city errs in interpreting the annexation policy to allow the city to defer consideration of a development proposal until after the property is annexed. *Just v. City of Lebanon*, 45 Or LUBA 179 (2003).

39.3 Boundary Changes – Annexation. LUBA will remand a city’s zoning designation decision, where the decision is dependent on the validity of a concurrent annexation decision that LUBA has concluded does not comply with applicable law. *Just v. City of Lebanon*, 45 Or LUBA 179 (2003).

39.3 Boundary Changes – Annexation. A city may dispense with an annexation election within annexation territory if at least 50 percent of the landowners owning at least 50 percent of the land area and at least 50 percent of the assessed value within annexation territory consent to the annexation. If a public landowner fails to consent or object to an annexation conducted pursuant to ORS 222.170, the city is not required to include that public land in order to satisfy ORS 222.170. *Friends of Linn County v. City of Lebanon*, 45 Or LUBA 204 (2003).

39.3 Boundary Changes – Annexation. A city does not violate an annexation policy that gives priority status to the annexation of territory that must be serviced by city facilities in order to avoid a potential health hazard, where there is evidence that at least a portion of the annexed territory has a failing septic system, and there is no prohibition against including nonpriority property with a request to annex priority property. *Friends of Linn County v. City of Lebanon*, 45 Or LUBA 204 (2003).

39.3 Boundary Changes – Annexation. A city’s findings that a proposed annexation is consistent with applicable annexation policies that require a showing that (1) adequate public facilities are available to serve the property; (2) the proposed annexation is needed; and (3) the annexation will result in a compact growth pattern, are not adequate when they fail to address petitioner’s arguments that (1) not all of the needed public facilities have been determined to be available; (2) that the annexation is not needed because there is an abundance of available land within city limits; and (3) the annexation will not result in a compact growth pattern because it will result in a bulge in city limits that is almost entirely surrounded by unincorporated territory. *Friends of Linn County v. City of Lebanon*, 45 Or LUBA 204 (2003).

39.3 Boundary Changes – Annexation. LUBA will defer to a city council interpretation of its zoning ordinance as not requiring a separate zoning amendment application where city zoning is applied to property inside the city’s urban growth boundary as part of the annexation process. *Barton v. City of Lebanon*, 45 Or LUBA 214 (2003).

39.3 Boundary Changes – Annexation. Notices of changes to annexation boundaries that are required to be sent pursuant to ORS 198.730 are properly included in the record in an appeal of that annexation decision to LUBA. *Miner v. Clatsop County*, 45 Or LUBA 748 (2003).

39.3 Boundary Changes – Annexation. The combined effect of ORS 197.175(1) and OAR 660-001-0300 and 660-001-0310 is to make all city annexation decisions land use decisions. Either (1) the city’s comprehensive plan or land use regulations have criteria that govern the annexation, in which case the annexation decision is a land use decision under ORS 197.015(10)(a)(A)(ii) or (iii), or (2) the comprehensive plan and land use regulations do not have criteria that govern annexation decisions, in which case under ORS 197.175(1) and OAR 660-001-0310 the statewide planning goals continue to apply directly and make the annexation decision a land use decision under ORS 197.015(10)(a)(A)(i). *Cape v. City of Beaverton*, 43 Or LUBA 301 (2002).

39.3 Boundary Changes – Annexation. An annexation must include a land use decision that addresses relevant land use criteria and that land use decision must become final prior to or at the same time as any separate decision that is adopted to make the annexation final. *Cape v. City of Beaverton*, 43 Or LUBA 301 (2002).

39.3 Boundary Changes – Annexation. Where statutory and Metro provisions permit annexation without a public hearing or an election if the owners of all property to be annexed consent to the annexation, and property is annexed pursuant to those provisions without the consent of all property owners, the annexation decision will be remanded. *Cape v. City of Beaverton*, 43 Or LUBA 301 (2002).

39.3 Boundary Changes – Annexation. A decision that annexes property into city limits using quasi-judicial land use processes set out in the local code for such annexation decisions is reviewable as a quasi-judicial land use decision. *West Side Rural F.P.D v. City of Hood River*, 43 Or LUBA 546 (2003).

39.3 Boundary Changes – Annexation. A city’s failure to enter into an urban services agreement with a rural fire protection district prior to annexing property located within the fire district does not violate either Goal 2 or Goal 11. *West Side Rural F.P.D v. City of Hood River*, 43 Or LUBA 546 (2003).

39.3 Boundary Changes – Annexation. A city decision to annex a Y-shaped parcel is not an impermissible “cherry stem” annexation, because the property (1) is contiguous to city limits in two places; (2) is located within the city urban growth boundary, and (3) is developed with an urban street interchange that serves the city and its environs. *West Side Rural F.P.D v. City of Hood River*, 43 Or LUBA 546 (2003).

39.3 Boundary Changes – Annexation. Where petitioner argues the city erred by approving an expedited annexation while failing to “(1) publish public notice, (2) notify adjacent property owners, (3) post a notice on the properties, (4) notify property owners within created ‘service islands,’ or (5) notify the community in time for this issue to be included on public agendas to be discussed,” but petitioner identifies no legal requirement for any of these kinds of notice, petitioner fails to provide a basis for reversal or remand. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

39.3 Boundary Changes – Annexation. Where a city provides notice that it will provide a hearing to comment on a proposed expedited annexation if a hearing is requested, and petitioner requested a hearing, the city errs in approving the expedited annexation without providing the requested hearing. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

39.3 Boundary Changes – Annexation. Notwithstanding a city’s procedural error in failing to provide a hearing on a proposed expedited annexation, petitioner’s substantial rights were not thereby violated where petitioner was nevertheless allowed to appear before the city council and present his comments before the city council approved the expedited annexation. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

39.3 Boundary Changes – Annexation. A code provision allowing the city to annex property as long as conditions imposed in previous decisions adopting annexation agreements are satisfied does not require the city to revisit those previous decisions, nor does it require that the record of the annexation decision contain the studies that supported the previous decisions accepting the annexation agreements. *Troy v. City of Grants Pass*, 41 Or LUBA 112 (2001).

39.3 Boundary Changes – Annexation. Reference to “a portion of Sunset Highway” in a notice of proposed annexation decision is likely insufficient to provide reasonable notice of the decision under applicable code and statutory requirements. However, where a petitioner nevertheless was able to determine the nature and scope of the proposal and submit written opposition to the proposal, the petitioner may not successfully assert possible injury to other persons’ substantial rights as a basis for reversal or remand. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

39.3 Boundary Changes – Annexation. A city cannot rely on the existence of its urban growth boundary to provide the “annexation plan” required by *Skourtes v. City of Tigard*, 250 Or 537, 444 P2d 22 (1968), and ORS 222.175 as necessary for informed consent to annexation. *Johnson v. City of La Grande*, 39 Or LUBA 377 (2001).

39.3 Boundary Changes – Annexation. Under *Skourtes v. City of Tigard*, 250 Or 537, 444 P2d 22 (1968), an annexation plan must be provided to parties prior to obtaining their consents to annexation. *Johnson v. City of La Grande*, 39 Or LUBA 377 (2001).

39.3 Boundary Changes – Annexation. An annexation decision that includes findings of compliance with local land use standards is a land use decision subject to LUBA review. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. If an annexation decision includes the application of and findings of compliance with local land use regulations, it is a land use decision, notwithstanding that, in the absence of the application of land use standards, a city’s discretionary decision to annex property is not a land use decision. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. An annexation is a quasi-judicial decision if (1) the initiation of the annexation is bound to result in a decision; (2) the local government is bound to apply pre-existing criteria to concrete facts; and (3) the action is directed at a closely circumscribed

factual situation or a relatively small number of persons. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. An annexation decision is not a quasi-judicial decision when the initiation of the annexation does not require that the city complete the process, and where the annexation applies to 155 parcels owned by 127 different persons. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. The fact that property subject to an annexation is located within an urban growth boundary does not obviate the requirement that the city obtain informed consents to annexation by providing a copy of an annexation plan to those persons from whom consents are solicited. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. Consents to annexation pursuant to ORS 222.173 and petitions for annexation are valid only if the consenting parties or signatories to the petition are provided an annexation plan prior to giving their consent. *Skourtes v. City of Tigard*, 250 Or 537, 444 P2d 22 (1968). *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. A local government need not provide an annexation plan to obtain valid, informed consents to annexation with respect to consents given in exchange for the extra-territorial provision of city services. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. Residents of annexation territory who signed consents to annexation to obtain city water and sewer services were not coerced into doing so, even though their consents were given because their wells were contaminated and septic tanks were failing. The city did not cause the contamination, nor did the city require the extraterritorial residents to connect to city systems. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. Consents to annexation obtained pursuant to ORS 222.115, where the consent is given in exchange for the city's provision of extra-territorial services, are constitutional. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. Consents to annexation that are obtained pursuant to ORS 222.115, where the consents are given in exchange for the city's provision of extra-territorial services, are not subject to the one-year limitation on consent under ORS 222.173. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. Consents to annexation obtained in exchange for the provision of city services are not valid if they were obtained prior to the enactment of ORS 222.115, the statute authorizing the city to enter into such contracts. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. ORS 222.115 does not prohibit the inclusion of nonconsenting owners into an annexation territory. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. Consents to annexation that are obtained pursuant to ORS 222.115 must be recorded before they can be effective against third-party successors in interest. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. When a city’s decision to annex territory is also a land use decision, the city must be able to demonstrate that the annexation decision complies with the statutory annexation requirements and is supported by substantial evidence in the record. A failure to demonstrate such compliance requires a remand. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

39.3 Boundary Changes – Annexation. A city decision to deny a request for annexation and subdivision approvals, based solely on a city’s refusal to consider annexation requests until its buildable lands inventory can be updated, constitutes a moratorium, as that term is defined in ORS 197.505(1). *Benchmark Enterprises v. City of Stayton*, 36 Or LUBA 433 (1999).

39.3 Boundary Changes – Annexation. A 1975 county decision to prohibit access to a street is not automatically nullified by a later city annexation and rezoning of the street. ORS 215.130 does not preclude the city from continuing the access restriction originally imposed by the county. *Applegate Estates v. City of Klamath Falls*, 35 Or LUBA 112 (1998).

39.3 Boundary Changes – Annexation. ORS 215.130(2) authorizes a city to process and approve a zone change contingent on future annexation to the city. *Lodge v. City of West Linn*, 35 Or LUBA 42 (1998).

39.3 Boundary Changes – Annexation. Where an intergovernmental agreement authorizes a city to grant conditional use and design review approval provided a pre-annexation agreement has been recorded, the city may grant such conditional use and design review approval subject to a condition of actual annexation. *Lodge v. City of West Linn*, 35 Or LUBA 42 (1998).

39.3 Boundary Changes – Annexation. ORS 222.170(4) applies only to annexations conducted under ORS 222.170(1) and is not applicable to annexations conducted under ORS 222.125. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

39.3 Boundary Changes – Annexation. ORS 222.170 does not require that property owners who are also electors submit separate consent forms as property owners and as electors. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

39.3 Boundary Changes – Annexation. A determination of whether an annexation is reasonable requires a case-by-case analysis of several factors, including whether the contiguous territory represents the actual growth of the city beyond its city limits, whether it is valuable by reason of its adaptability for prospective town uses, whether it is needed for the extension of streets or to supply residences or business for city residents, and whether the territory and city will mutually benefit from the annexation. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

39.3 Boundary Changes – Annexation. The reasonableness test for approval of an annexation has a low threshold and is satisfied by a showing that the territory is suitable for annexation and represents the city’s current and future direction for commercial growth. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

39.3 Boundary Changes – Annexation. A comprehensive plan provision that requires a city to jointly review annexation procedures with the county is satisfied where the decision explains that the city’s efforts to involve the county in the proceeding, and the county’s choice to minimally participate, satisfy the policy. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

39.3 Boundary Changes – Annexation. Where a local code requires that sewer facilities be “available” as a condition of approval for annexation, the local government’s interpretation of the “available” criterion as being met where extension of sewer services is feasible within the current planning period is not clearly wrong. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

39.3 Boundary Changes – Annexation. Under ORS 12.270, a boundary alteration, initiated and purported to be effective, is conclusively presumed effective one year after the purported effective date, notwithstanding procedural defects in adoption. *Carlson v. City of Dunes City*, 30 Or LUBA 129 (1995).

39.3 Boundary Changes – Annexation. ORS 222.111(1) cannot be interpreted to allow “cherry stem annexations,” which annex a road as a means to connect and annex an otherwise noncontiguous parcel to a city, on the basis that such roads “separate” the noncontiguous parcel from the city. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

39.3 Boundary Changes – Annexation. “Cherry stem annexations,” which annex a road as a means to connect and annex an otherwise noncontiguous parcel to a city, frustrate the contiguity requirement of ORS 222.111(1) and are inherently unreasonable. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

39.3 Boundary Changes – Annexation. ORS 222.173(1) imposes a time limit on the effectiveness of certain consents to annexation, (2) provides an exception to the time limit, and (3) makes such consents to annexation public records. Neither ORS 222.173 nor ORS 222.115 authorizes a city to condition provision of sewer service by a provider other than the city on execution of consents to annexation by property owners. *Bear Creek Valley San. Auth. v. City of Medford*, 27 Or LUBA 328 (1994).

39.3 Boundary Changes – Annexation. ORS 197.175(2), Goals 11 and 14 and OAR chapter 660, division 11, provide authority for a city and county to adopt a comprehensive plan policy requiring that owners of unincorporated property within an urban growth boundary sign consents to annexation in order to receive sewer service. *Bear Creek Valley San. Auth. v. City of Medford*, 27 Or LUBA 328 (1994).

39.3 Boundary Changes – Annexation. 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).

39.3 Boundary Changes – Annexation. City and county ordinances requiring that owners of certain unincorporated property either annex or sign a consent to annexation before receiving sewer connection permits do not improperly infringe on such property owners' statutory right to vote on annexations. *Bear Creek Valley San. Auth. v. City of Medford*, 27 Or LUBA 328 (1994).

39.3 Boundary Changes – Annexation. Ordinances requiring consents to annexation as a condition of receiving sewer service do not improperly coerce property owners to give up their right to vote on annexations simply because an objecting property owner may be forced to pay a LID benefit assessment for the cost of extending sewer service that the objecting property owner does not wish to receive. Any such benefit assessments may be challenged on that basis in a proper forum and will either be invalidated or sustained. *Bear Creek Valley San. Auth. v. City of Medford*, 27 Or LUBA 328 (1994).

39.3 Boundary Changes – Annexation. A city and county may conclude the consequences of allowing sewer service to be provided without first securing consents to annexation outweigh any difficulties requiring such consents to annexation will pose for a sanitary district's use of local improvement districts to pay the cost of providing sewer service. Coordination under Goal 2 does not require that all affected governmental units agree on the proposal. *Bear Creek Valley San. Auth. v. City of Medford*, 27 Or LUBA 328 (1994).

39.3 Boundary Changes – Annexation. Where LUBA has remanded a city decision annexing certain property, a subsequent city decision amending the comprehensive plan and zoning designations for that property, in reliance on the annexation, exceeds the city's authority. *Roloff v. City of Milton-Freewater*, 27 Or LUBA 256 (1994).

39.3 Boundary Changes – Annexation. Under ORS 197.175(1), city decisions to annex unincorporated territory concern the application of the statewide planning goals and, therefore, satisfy the statutory definition of a "land use decision." *Roloff v. City of Milton-Freewater*, 27 Or LUBA 80 (1994).

39.3 Boundary Changes – Annexation. An annexation of contiguous property with the written consent of the property owners, pursuant to ORS 222.125, is subject to the requirement of ORS 197.175(1) that the annexation be determined to be consistent with applicable land use requirements, and the recognized procedural requirements for such quasi-judicial land use decision making. *Roloff v. City of Milton-Freewater*, 27 Or LUBA 80 (1994).

39.3 Boundary Changes – Annexation. Where a city comprehensive plan expressly recognizes that the county has jurisdiction to issue land use permits prior to annexation of unincorporated

areas, the city must annex an unincorporated area before it has jurisdiction to grant land use permits for such unincorporated areas. *Recht v. City of Newport*, 26 Or LUBA 316 (1993).

39.3 Boundary Changes – Annexation. Where property is annexed and it is not clear whether a plan policy and implementing measure governing annexations applies in the particular circumstances, a remand is required so that the local government may either apply the plan policy and implementing measure or explain why it does not apply. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

39.3 Boundary Changes – Annexation. ORS 197.752(1) imposes a general planning obligation on local governments; it is not an approval standard directly applicable rezoning or annexation decisions. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

39.3 Boundary Changes – Annexation. A city may establish compliance with a code provision which specifically requires a determination of a public need before additional land may be annexed by adopting findings demonstrating that a determination of public need to annex the subject property is supported by relevant plan provisions and explaining why other relevant plan policies not supportive of such a determination may be disregarded. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

39.3 Boundary Changes – Annexation. To show a public need for a 10-acre “community shopping center,” of which the property proposed to be annexed would be a part, the city’s findings must establish a nexus between the stated “need” to have additional retail businesses within the city and to stop retail leakage to a neighboring city, and the “need” for a “community shopping center” requiring a 10-acre vacant retail zoned site within the city. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).