1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will reverse a governing body's interpretation of a code provision allowing a permit to be extended where the "approval criteria for the original decision * * * have not changed" to allow an extension notwithstanding that new applicable approval criteria have been adopted since the original decision, as long as the approval criteria "actually applied" in making the original decision have not changed. That interpretation inserts the terms "actually applied" into the code, and is expressly inconsistent with the text and purpose of the code provisions governing permit extensions. *Thrive Hood River v. Hood River County*, LUBA No 2020-081 (Apr 9, 2021).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A county plausibly interprets a code provision allowing an extension of a permit when "a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance have not changed" to refer to changes in state policy rather than county policy, because the term "policy" is grouped with references to state laws and regulations. *Thrive Hood River v. Hood River County*, LUBA No 2020-081 (Apr 9, 2021).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The deferential standard of review in ORS 197.829(1) does not apply to a hearings officer interpretation of a local regulation, nor does it apply to an interpretation of a local regulation that directly implements a state statute. Under these circumstances, the appropriate standard of review is whether the interpretation is legally correct, applying the general rules of statutory construction set out at ORS 174.010 and in cases such as *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009), and *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). *Landwatch Lane County v. Lane County*, LUBA No 2021-010 (May 10, 2021).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A hearings officer does not err in interpreting a local subdivision ordinance that implements a state statute specifying that to "subdivide land" means to divide land into four or more units of land, without any temporal limitation, to include only proposals to divide land into four or more lots at the same time, effectively allowing serial land divisions, where such an interpretation is consistent with the text, context, and legislative history of the statute it implements, and where the temporal element of the interpretation is only incidental to the interpretation of the express language. *Landwatch Lane County v. Lane County*, LUBA No 2021-010 (May 10, 2021).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will affirm a city council's interpretation of a code provision requiring an oceanfront setback based on the "average" setback of buildings in the area, to allow the "average" to be calculated based the setback of the only building within the area, where that interpretation is a plausible reading of the text and context, including context in the local code stating that plural nouns include the singular. *Roberts v. City of Cannon Beach*, LUBA No 2020-116 (July 23, 2021).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local government misconstrues its code where it denies a permit extension under a provision allowing an applicant to demonstrate that poor economic conditions exist "in lieu of" showing project progress, but nonetheless evaluates or conditions approval on the applicant's lack of progress under the separate progress criterion. Where the code provides alternative and independent paths

to approval, the decision maker may not link those paths or require satisfaction of one to obtain relief under the other, nor may it insert additional temporal or causation requirements not expressed in the code. *Hollander Hospitality v. City of Astoria*, LUBA No 2021-061 (Sept 30, 2021).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will affirm a hearings officer's interpretation that a proposed private field sports facility is conditionally allowed in a rural residential zone as a "park," a term not defined in the code, notwithstanding that it lacks some of the common pastoral features of a park as defined in the dictionary, but the code read in context with applicable comprehensive plan policies allows a variety of recreational uses in the zone , as well as "similar uses," and all of the proposed activities are either listed as recreational uses, similar to listed uses, or accessory to listed uses *Jones v. Clackamas County*, LUBA No 2021-040 (Nov 29, 2021).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a city's minimum lot size requirements are based, in part, upon a code provision which requires a measurement of a lot's "slope," and the city interprets the term "slope" to be determined using post-development grades, rather than pre-development grades, LUBA will uphold the city's interpretation as "plausible" subject to *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), where the city found that "slope" is an ambiguous term, and the city interprets the term in a manner consistent with its interpretation of the text and in context of historical application of the code provision. An ambiguous code provision term is one with more than one possible construction of the term, and the local government interprets such a term in a "plausible" manner when read consistently with the express language of the code, as read in context. *Estroff v. City of Dundee*, 79 Or LUBA 189 (2019).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a code provision states that the "provisions of this code shall be interpreted as minimum requirements. When this code imposes a greater restriction than is required by other provisions of law * * * the provisions of this code shall control," and petitioners argue that the city erred in applying the least restrictive, rather than the most restrictive interpretation of the city's code requirement that minimum lot size be determined by "slope," by allowing project applicants to measure slope after grading, rather than before grading, to maximize their potential minimum developable lot size, but petitioners do not identify what other provision of law imposes a lesser restriction as regards to minimum lot size that the city should have applied, petitioners have not provided a basis for reversal or remand. *Estroff v. City of Dundee*, 79 Or LUBA 189 (2019).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Even if a local government's interpretation of its code were less plausible than petitioners' preferred interpretation, the "existence of a stronger or more logical interpretation does not render a weaker or less logical interpretation 'implausible' under the *Siporen*[*v. City of Medford*, 349 Or 247, 243 P3d 776 (2010),] standard." *Mark Latham Excavation, Inc. v. Deschutes County*, 250 Or App 543, 555, 281 P3d 644 (2012). *Estroff v. City of Dundee*, 79 Or LUBA 189 (2019).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a local code provision prohibits uses that "alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties," a hearings officer

errs in reducing the inquiry into a single inquiry into whether the proposed use makes the use of nearby properties "substantially worse," since the words "limit" and "impair" have different meanings and since, where a local code uses two different terms in the same provision, it is presumed that the enacting body intends two different meanings. *York v. Clackamas County*, 79 Or LUBA 278 (2019).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a local code provision prohibits a "[p]layground, recreation facility or community center owned and operated by a government agency or nonprofit community organization," a local governing body does not misconstrue the provision by interpreting the phrase "owned and operated by a government agency or nonprofit community organization" as applying to each antecedent rather than just to the last antecedent, community centers, and therefore as permitting a private recreation facility in the zone, where (1) the provision's language implements state law, which is concerned only with public facilities, (2) the code sets out a separate use category for "recreation-oriented facility," and (3) the local government has historically viewed the provision to encompass only public facilities. *Bishop v. Deschutes County*, 79 Or LUBA 380 (2019).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will affirm as correct a city planning commission's interpretation that a city code provision that prohibits "grading" on portions of a site that contains steep slopes does not prohibit all development activities that disturb soil, where the city's code does not define the terms "grading" and "excavating," but does define "development" as including both "grading" and "excavating" as separate terms. LUBA will affirm the city planning commission's conclusion that the grading prohibition is not violated by a PUD site plan that requires digging holes to install support posts for cantilevered dwellings and digging and refilling trenches to install water lines in areas containing steep slopes because those activities constitute excavation and not grading. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78 Or LUBA 418 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the city's code provides that development application materials "shall reflect that consideration has been given to [tree] preservation," the city does not err in finding that the code requirement is met when the applicant's submissions demonstrate that consideration was given to tree preservation through a tree survey and site design that preserves trees within a stand on slopes greater than 25 percent, contains yard sizes that decrease critical root zone impacts, and preserves trees between and around homes. Those application materials reflect that consideration was given to tree preservation even though some high and moderate priority trees must be removed to develop streets, utilities and building pads, and preservation of trees on residential lots would be left to the discretion of future lot owners. The code does not require the actual preservation of trees; instead, the code requires a project applicant to consider tree preservation and submit evidence to demonstrate that such consideration occurred. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78 Or LUBA 418 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Extension and improvement of a residential access road over an existing public right-of-way is not subject to a city code section that requires streets that are "dedicated to the public by the applicant * * * conform" with adopted street right-of-way maps. A proposed improvement of a type of street that

is not depicted on the city's adopted street right-of-way map does not fail to "conform" with that map. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78 Or LUBA 418 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. That different setbacks standards with different language are interpreted to require the same setback distance does not run afoul of the general interpretative requirement to give different effect to different words used in the same statute, where the local government shows that the different words nevertheless support requiring the same setback distance. *Brannon v. Multnomah County*, 77 Or LUBA 275 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will deny a petitioner's challenge to a county board of commissioners' conclusion that a marijuana production project applicant had satisfied the requirement to provide proof that water is available to the property by providing a "statement that water is supplied from a public or private water provider," by providing a letter from a private company stating it would supply water to the property where petitioner argues the letter is insufficient because the private water provider does not hold a water right. Based on its plain language, the county code does not require such a statement, but only requires a statement from a "private water provider" that they will provide water for the operation. *King v. Deschutes County*, 77 Or LUBA 339 (2018).

1.1.2 Administrative Law – Interpretation of Law – Generally. LUBA will deny petitioner's challenge that the provider of water must have "an authorized source of water under Oregon Water Law" where county code requires an applicant for marijuana production to provide proof that water is available to the property by providing a statement that "water is supplied from a public or private water provider," the county code does not further define "provider of water," and the county imposed a condition of approval requiring "the use of water from any source for marijuana production shall comply with all applicable state statutes and regulations including ORS 537.545 and OAR 690-340-0010." *King v. Deschutes County*, 77 Or LUBA 339 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local government does not misinterpret the term "substation" by interpreting it to be an example of the use category "utilities" that is broad enough to include a wireless transmission tower. And it does not matter that the wireless transmission tower is a cell tower and that there were no cell towers in 1984 when the legislation defining substation and utilities was adopted. There were radio transmission and communication towers in 1984, which are similar to cell towers, and it is not unusual for new uses to come into existence and fall into existing broad use categories. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local governing body's conclusion—that the general category of utility "[d]istribution plants and substations" adopted in 1984 is broad enough to include a wireless transmission tower—is not inconsistent with contemporary and other dictionary definitions of "distribution," "plant" and "substation." *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A local governing body does not err by refusing to view the term "distribution plants and substations" as a technical

term or term of art. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When a local government adopts a new rule of interpretation it is not limited to applying that new rule of interpretation to subsequently enacted legislation. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. ORS 215.750 and OAR 660-006-005(5) allow a county to approve a forest template dwelling if, after applying a 160-acre template centered on the subject property, at least 11 other "lots or parcels that existed on January 1, 1993, are" within the 160-acre area. A hearings officer's finding that the applicant met the 11-lot requirement by counting three parcels with boundaries that were later reconfigured pursuant to property line adjustment after January 1, 1993, as long as the parcels as they existed on January 1, 1993 were "partly or completely within the template boundaries," and counting a fourth parcel that was partitioned into two parcels after January 1, 1993 as one parcel is consistent with the statute and the rule, where the administrative rule history of OAR 660-006-0005(5) indicates the Land Conservation and Development Commission (LCDC) did not intend to prohibit an applicant from relying on the January 1, 1993 configuration of a later-reconfigured parcel so long as "the effect of" later properly line adjustments was not "to qualify a lot, parcel or tract for the siting of a dwelling." *Landwatch Lane County v. Lane County*, 75 Or LUBA 151 (2017).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A 1983 Oregon Department of Land Conservation and Development (DLCD) memorandum stamped "preliminary draft subject to revision" is not competent legislative history LUBA can rely on in determining the intent of the legislature in enacting a statute. *Landwatch Lane County v. Lane County*, 75 Or LUBA 258 (2017).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will reject an interpretation of a county Wildlife Area overlay zone, which implements Statewide Planning Goal 5 to protect winter range in part by prohibiting new churches in winter range, to the effect that the WA overlay zone prohibits churches in winter range areas only where the underlying base zone categorizes churches as a conditional use, but that interpretation would allow churches in winter range areas if the underlying base zone categorizes churches as something other than a conditional use, given that conflicts between churches and winter range are the same whether churches are categorized as permitted or conditional uses. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A hearings officer Misconstrues the text and context of a county's Wildlife Area (WA) overlay zone, in concluding that prohibitions on certain new uses, including churches, in winter range areas are limited exclusively to areas where the underlying base zone categorizes such uses as conditional uses, where other provisions of the WA overlay zone make it clear that the prohibition on new uses in winter range is not limited to uses categorized as conditional uses in the underlying base zone. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. An amendment to

require that vacation rental dwellings must have at least one parking place per bedroom does not conflict with the zoning ordinance's requirement that all residences must have two parking places, where the text and context of the zoning ordinance and amendment make it clear that the one parking space per bedroom requirement applies only to residences that are used as a vacation rental dwelling. *Whittemore v. City of Gearhart*, 75 Or LUBA 374 (2017).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the text of a county comprehensive plan policy limits redevelopment of areas developed as golf courses or designated open space or common area within a resort, but includes no language prohibiting redevelopment of other areas within the resort, interpreting the policy to implicitly prohibit new residential development anywhere within the resort would impermissibly insert what has been omitted pursuant to ORS 174.010, and may not survive even the deferential review required under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. OAR 660-033-0140(1) provides that a discretionary permit on resource land is void two years from the date of the final decision "if the development action is not initiated within that period." However, reading OAR 660-033-0140(1) to allow the permit approval to remain valid indefinitely once it is initiated within the two-year period is inconsistent with OAR 660-033-0140(2), which allows an extension for one year if the applicant was unable to begin or "continue development during the approval period." The requirement to show that the application was unable to "continue development during the approval period" indicates that simply initiating the development within the two-year period is not sufficient in itself to render the permit valid indefinitely, without the need to seek an extension. *Landwatch Lane County v. Lane County*, 74 Or LUBA 299 (2016).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Interpreting OAR 660-033-0140(1) to allow a discretionary permit approval to remain valid indefinitely once it is initiated within the initial two-year approval period is inconsistent with OAR 660-033-0140(4), which provides that additional extensions beyond one year may be authorized where applicable criteria have not changed. *Landwatch Lane County v. Lane County*, 74 Or LUBA 299 (2016).

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a city's code offers a path for developers to qualify proposed housing as "needed housing," in order to obtain waiver of certain standards that would otherwise apply, LUBA will similarly interpret a related code provision requiring that site review provisions be applied when "the application proposes needed housing," to the effect that the site review provisions apply only if the applicant seeks to qualify the proposed housing as "needed housing." *McCollough v. City of Eugene*, 74 Or

LUBA 573 (2016).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA's conclusion that a planning commission's procedural error in failing to grant the continuance or open record period dictated by ORS 197.763(6)(a) through (c) provides no basis for reversal or remand, where the city council took corrective action to avoid prejudice to petitioner's substantial rights, does not improperly insert missing text into a development code that duplicates ORS 197.763(6)(a) through (c). *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A development ordinance that links the terms "mining" and "quarrying" suggests the term "mining" should not be limited to removal of minerals that exclude rock, where dictionary definitions of "quarrying" frequently define that term to include rock removal. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a development code states that "minerals" include three general categories: solids, liquids, and gases, but these general categories are followed by specific examples: "coal and ores," "crude petroleum" and "natural gases," the rule of statutory construction *ejusdem generis* lends some support for interpreting the word "minerals" to be a narrow category of precious and/or valuable substances, as opposed to mere rock or aggregate. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a development code definition of the term "excavation" separately lists removal of "minerals" and "rock" as possible examples of "excavation," that suggests "minerals" and "rock" are different things and that "minerals" do not include "rock." *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a development code definition of "surface mining" duplicates a statute that defines "surface mining" to include mining of "minerals," without expressly incorporating the broad statutory definition of "minerals" or the statutory exceptions to that broad definition of "minerals" the development code definition of "surface mining" lends some support to the position that the enactors of the development code intended the word "minerals" to have a more narrow meaning than the statutory definition of that term. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. One possible inference when a development code definition of "surface mining" duplicates a statute that defines "surface mining" to include mining of "minerals," is that the enactors of the development code intended the word "minerals" to have its statutory meaning, even if the enactors did not expressly incorporate the broad statutory definition of "minerals" or the statutory exceptions to that broad definition of "minerals" into the development code. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. There is nothing inherently inappropriate about a local government distinguishing between acceptable excavations that are necessary for development and excavations that are of a nature and extent that constitutes mining. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. While dictionaries are not always a reliable way to determine the intended meaning of an undefined term like "minerals," where the development codes expressly directs that undefined terms "have the normal dictionary meaning" it is appropriate to rely on dictionary definitions to interpret the word "minerals" to include basalt rock. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. ORS 197.770, which provides that existing firearms training facilities may continue, is silent regarding the expansion of an existing firearms training facility. Because the statute is silent on expansion, it does not prohibit expansion, if expansion is otherwise authorized and consistent with other applicable law. *H.T. Rea Farming Corp. v. Umatilla County*, 71 Or LUBA 125 (2015).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. While a county governing body cannot be faulted for not considering dictionary definitions that were not cited to it below, the county governing body can be faulted for relying on a general on-line dictionary definition of "penstock," when a party asserted that term has a technical meaning and cited two treatises in support its position that the term has a narrower meaning that the on-line general dictionary definition. *Pacificorp v. Deschutes County*, 70 Or LUBA 89 (2014).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Generally use of the same phrase in different provisions of the same statute indicates that the phrase has the same meaning. Because ORS 197.772(1) uses the term "property owner" to refer to the property owner at the time that the property is designated a historic resource, the use of the same term in ORS 197.772(3), which allows a property owner to request removal of the designation, suggests that "property owner" as used in ORS 197.772(3) refers to the owner at the time of designation, not subsequent purchasers of the property. *Lake Oswego Preservation Society v. City of Lake Oswego*, 70 Or LUBA 103 (2014).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Notwithstanding that ORS 197.772(1) and (3) both use the same phrase "property owner," the two sub-sections operate in entirely different, non-overlapping circumstances, which suggests that "property owner" as used in ORS 197.772(3) may not be limited by context, as is ORS 197.772(1), to the property owner at the time property is designated a historic resource. *Lake Oswego Preservation Society v. City of Lake Oswego*, 70 Or LUBA 103 (2014).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where legislative history of ORS 197.772(3) indicates that the legislators proposing that section believed the phrase "property owner" as used in that provision referred only to the property owner at the time property was designated for historic resource, and did not include subsequent purchasers, and an amendment intended to specify that "property owner" also included subsequent purchasers was later deleted in conference, the strongest inference is that the legislature intended "property owner"

as used in ORS 197.772(3) to include only the property owner at the time of designation, and not subsequent purchasers. *Lake Oswego Preservation Society v. City of Lake Oswego*, 70 Or LUBA 103 (2014).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where legislative history of ORS 197.772(3) indicates that legislators intended to offer remedial relief to property owners who were "coerced" into having their property designated as a historic resource, but the legislative history does not indicate that the legislature was equally concerned with subsequent purchasers who acquire the property knowing it is designated as a historic resource, that legislative history supports the conclusion that "property owner" as used in ORS 197.772(3) is limited to owners at the time the property was designated, not subsequent purchasers. *Lake Oswego Preservation Society v. City of Lake Oswego*, 70 Or LUBA 103 (2014).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Legislative Counsel's decision to renumber as ORS 215.284(1) to (6) what the legislature enacted as ORS 215.283(3) to (8) does not change the fact that what is now codified at ORS 215.284(1) to (6) was enacted by the legislature as part of ORS 215.283 and 215.283. ORS 215.283 is the statutory regime that applies to non-marginal lands counties rather than marginal lands counties. *Landwatch Lane County v. Lane County*, 70 Or LUBA 325 (2014).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A comprehensive plan provision is ambiguous if it can be interpreted in more than one way. *Northgreen Property LLC v. City of Eugene*, 68 Or LUBA 76 (2013).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A comprehensive plan policy that requires the city to extend "key urban services and facilities in an orderly and efficient manner" is relevant context for interpreting a comprehensive plan provision that requires the local government to design and locate public and private facilities such as cellular communications towers in a manner that "preserves and enhances desirable features of local and neighborhood areas" and "promotes their sense of identity," where the two policies deal with the same subject matter. *Northgreen Property LLC v. City of Eugene*, 68 Or LUBA 76 (2013).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A standard that requires mitigation of permanent disturbances to wetlands is not properly construed to apply to the entirety of a parcel that contains a wetland area, such that the standard is applied to disturbances elsewhere on the parcel that have no impact on the wetland area. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. ORS 197.829(1)(d) effectively obligates a local government to interpret an ambiguous code provision if possible in a manner not contrary to the applicable statewide planning goals and administrative rules, not only where the code provision directly implements a goal or rule protecting resource lands, but also where the code provision is a general provision applicable to all zones, including resource zones, and is not intended to implement any particular goal or rule. *White v. Lane County*, 68 Or LUBA 423 (2013).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where one plan strategy directs that lands subject to flooding be designated "Floodplain" and the following plan strategy directs that no permanent structures may be erected in lands subject to flooding unless the structure complies with the "Floodplain" criteria, a local governing body's interpretation of those plan strategies to require application of the "Floodplain" criteria only in areas that have already been designated "Floodplain" runs afoul of ORS 174.010 by failing to "give effect" to the second strategy and by "inserting what has been omitted" in the second strategy by inserting a requirement that the lands subject to flooding must have been zoned "Floodplain." *Friends of the Hood River Waterfront v. City of Hood River*, 68 Or LUBA 459 (2013).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the language of a development code is such that it anticipates an application for declaratory ruling will be submitted by a single owner of a single property, the development code is therefore ambiguous regarding whether an application for a declaratory ruling is possible when the application concerns more than one property and is ambiguous regarding whether the application must be signed by all property owners or may be signed by any property owner. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a zoning ordinance would allow a VA outpatient clinic use as "Government Services" uses only if the use is not "specifically listed" uses in other zoning districts, and the zoning ordinance authorizes "Medical Health Facilities" in other zoning districts, the critical question is whether authorizing "Medical Health Facilities" in those other zones is sufficient to "specifically list" the proposed VA outpatient clinic use. In resolving that question, the maxim of statutory construction in ORS 174.020 that calls for selection of a particular provision over a more general provision where they conflict is of no particular assistance. *Randazzo v. City of Eugene*, 65 Or LUBA 272 (2012).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Construed in context with related code language and relevant statutes governing local appeals, a county's code is not correctly interpreted to bar non-applicant parties who participated in the evidentiary phase of a local permit proceeding from participating in an on-the-record appeal filed by the applicant to challenge permit conditions of approval. *Families for a Quarry Free Neighborhood v. Lane County*, 64 Or LUBA 297 (2011).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Post-enactment statements made by a currently serving member of a local decision making body who was also a member of a local legislative body at the time a land use regulation was enacted are not legislative history. *Siegert v. Crook County*, 63 Or LUBA 379 (2011).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Under *Flying J. Inc. v. Marion County*, 49 Or LUBA 28, 36-37, *aff'd*, 201 Or App 99, 117 P3d 1027 (2005), where the text of an ordinance that adopts zoning designation amendments expresses a clear intent that the prior zoning for a parcel be retained but the map attached to the ordinance shows a change in zoning, that conflict is resolved in favor of the text. *Turner v. Jackson County*, 62 Or LUBA 199 (2010).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where one sentence of a zoning ordinance provides that "any dispute" concerning the zoning of property is to be resolved by reference to the official zoning map, but that sentence appears immediately after a sentence that states that initial zoning boundary determinations are to be made based on maps generated by the local government's GIS system, those sentences should be read together to require that any disputes that arise based on the GIS maps or facts that arise after the zoning ordinance was adopted be resolved in favor of the official zoning map. But those sentences of the zoning ordinance do not require that a text/map conflict in the enacting zoning ordinance itself be resolved in favor of the official zoning map, where it is clear the new zoning shown for a property on the official zoning map was a mistake, and the text of the enacting ordinance clearly states that the zoning of the property was not changed by the ordinance. *Turner v. Jackson County*, 62 Or LUBA 199 (2010).

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. An interpretation of a city landslide hazard regulation that gives no effect to the main clause of the regulation and only gives effect to the subordinate clause arguably runs afoul of the interpretive principle embodied in ORS 174.010, which prohibits interpreting statutes in a way that omits statutory language that has been included in the statute. *Gravatt v. City of Portland*, 62 Or LUBA 382 (2011).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where one section of a zoning ordinance permits the city engineer to approve more than one driveway access to lots and parcels "subject to access requirements," and another section of the zoning ordinance setting out the city's access requirements generally prohibits direct access to arterials where a lot or parcel already has access to a lower category roadway, a city correctly denies the request for the direct arterial access. In that case the two sections of the zoning ordinance do not conflict; the contingent authority to grant more than one driveway is simply limited by the section setting out access requirements. *Athletic Club of Bend, Inc. v. City of Bend*, 61 Or LUBA 349 (2010).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Land use regulations that simply require that permit applications comply with "applicable" provisions in the land use regulations are frequently ambiguous, since they require an unguided review of the land use regulations to determine which provisions are "applicable." *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The applicability of a local government's land use regulations, viewed in isolation, may be unambiguous. However, when those same land use regulations are viewed in context with others parts of the local

government's land use regulations, the applicability of those land use regulations may be qualified or limited. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. When an applicable local provision requires that road improvements associated with a partition be constructed or bonded for "before a dwelling may be authorized," the local governments errs by requiring the improvements to be constructed or bonded for as a condition of approval of the partition itself. *Sperber v. Coos County*, 58 Or LUBA 570 (2009).

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Exclusive farm use and forest zoned lands are subject to statutory minimum parcel sizes. A generally applicable zoning ordinance definition of "lot size" that would allow internal rights-of-way to be included in computing lot size is not necessarily inconsistent with the statutory minimum parcel size

requirements where the statutes are silent about how to treat internal rights-of-way. If it turns out that internal rights-of-way must be excluded when applying statutory minimum parcel size requirements in exclusive farm use and forest zoned lands, the statutory requirement would have to be satisfied notwithstanding the general zoning ordinance definition. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

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

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where zoning ordinance commentary states that the purpose of a zoning ordinance limitation is to encourage "a local scale of retail," and encourage businesses that are "local serving rather than providing a regional draw," a city does not err in finding that the purpose of a zoning regulation that limits

commercial uses to 10,000 square feet is to encourage locally oriented businesses rather than businesses of any particular size. *Loprinzi's Gym v. City of Portland*, 56 Or LUBA 358 (2008).

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

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

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

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

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

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

(2008).

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a zoning ordinance allows "roadside stands," that sell "agricultural produce," a land use hearings officer correctly applies the *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993) template and the county zoning ordinance by applying dictionary definitions of "agricultural" and "produce" to conclude that a roadside stand may not include an espresso cart. The hearings officer correctly concluded from those definitions that while coffee beans are agricultural produce, espresso coffee drinks are not. *Collver v. Lane County*, 54 Or LUBA 147 (2007).

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the text of a city's development code only requires that the city not provide certain services in the absence of an annexation agreement, the city's interpretation of its code to allow it to require an annexation agreement at the time of partition approval, while not required by the text of the development code, is not inconsistent with the text of the development code. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (2007).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. A city's interpretation of a development code provision to allow it to require execution of an annexation agreement at the time of partition, rather than waiting until the property is developed, is consistent with contextual development code provisions that require annexation agreements at the time of partition approval without regard to whether development is proposed at the time of partition approval. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (2007).

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The purpose statement to a land use regulation is both context for interpreting that regulation as well as an explicit statement of its purpose. LUBA will reverse a governing body's interpretation of the regulation to allow residential uses that are prohibited by and therefore inconsistent with the purpose statement. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Some caution is warranted in determining the intended scope of a term based on dictionary definitions, given the descriptive and all-inclusive nature of modern reference dictionaries. In many cases, the text and context of the code term may indicate that the governing body did not intend the term to encompass all possible dictionary meanings. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a city's Master Plan Development District simply allows the uses that are permitted in certain other districts, the city erroneously interprets its code to allow those uses without the minimum lot size, minimum lot width, limit on building coverage, front or rear setback requirements or building height or any other standards or regulations that are applied to those uses in the other zoning districts. Those limitations from the other zoning districts apply unless the city applies the Master Plan Development District provision that allows the city to apply alternative standards in certain circumstances. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a regulation specifically authorizes a use in one zone and does not authorize that specific use in a second zone,

a more general authorization of uses in the second zone should not be interpreted to include the more specifically authorized use in the first zone. However, that principle would not apply to bar finding a particular feedlot qualifies as a "farm use" rather than a "commercial activity * * * in conjunction with farm use," where the legislature's authorization of "commercial activities that are in conjunction with farm use" is no more specific than its authorization of "farm uses." *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

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

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the local code provides a list of factors to be considered in order to demonstrate compliance with a mandatory approval criterion, preceded by the phrase, "evaluation factors include," the local government must consider the listed factors, or explain why particular factors need not be considered. *Bauer v. City of Portland*, 47 Or LUBA 459 (2004).

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

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. In considering whether a local government interpretation of a local provision is consistent with the express language of the provision under ORS 197.829(1), LUBA may consider the context of the provision. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a city code

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

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

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

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

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Under ORS 174.010, LUBA must give effect, if possible, to all provisions or particulars of a statute. *Walz v.*

Polk County, 31 Or LUBA 363 (1996).

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

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

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

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

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the city's

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

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where an EFU zone includes two provisions allowing churches and schools, and one of those provisions includes the OAR 660-33-130(3) restriction against approving churches and schools within 3 miles of an urban growth boundary but the other provision does not, LUBA will not assume the county will apply the provision that lacks the 3-mile limitation as though it includes the 3-mile limitation. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

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

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

27 Or LUBA 328 (1994).

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a "generally unsuitable" approval standard for nonforest dwellings established by an LCDC enforcement order provides that land with certain soil types is presumed *not* to be "generally unsuitable," unless findings explain why "other factors" make the land generally unsuitable, it is reasonable to interpret such "other factors" to be limited to the physical characteristics listed in the first part of the approval standard. *DLCD v. Klamath County*, 25 Or LUBA 355 (1993).

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Local ordinances governing when a local decision becomes final are effective only to the extent they do not conflict

with state statutes. *A Storage Place v. City of Tualatin*, 24 Or LUBA 637 (1993).

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a term used in a local enactment is not defined in that or other local enactments, the term must be construed in accordance with its plain and ordinary meaning, absent some evidence of a contrary local legislative intent. *Thatcher v. Clackamas County*, 24 Or LUBA 207 (1992).

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

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

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

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

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the local

code employs the terms "necessary for and accessory to," as a standard for farm dwellings in a mixed farm/forest zone, and where that standard appears to have been adopted to comply with Goal 4, it is appropriate to interpret the ordinance standard in a manner consistent with the interpretation of those terms in the context of Goal 4. *Tipperman v. Union County*, 22 Or LUBA 775 (1992).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a code separately lists "boarding of horses for profit" and "commercial activities in conjunction with farm use" as distinct conditional uses in certain exclusive farm use zones that another zone lists "commercial activities in conjunction with farm use" but does not list "boarding of horses for profit" as a conditional use, it is reasonable to infer that the latter use was not intended to be allowed in the other zone. *Moody v. Deschutes County*, 22 Or LUBA 567 (1992).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. In the absence of a local or other regulation making provisions of ORS chapter 468, pertaining to pollution control, applicable to an application for a wrecking certificate as independent approval standards, that statute does not govern local approval of a wrecking certificate. *Bradbury v. City of Independence*, 22 Or LUBA 398 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The correct way to resolve a conflict between code provisions that (1) specifically allow approval of golf courses in an EFU zone as a conditional use, but (2) establish approval standards for golf courses which make it impossible to ever approve a golf course in the exclusive farm use zone, is to conclude that the approval standards making approval an impossibility were not intended to govern approval of golf courses. *Waker Associates, Inc. v. Clackamas County*, 22 Or LUBA 233 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where there appear to be conflicting code provisions such that a code approval criterion has the effect of nullifying another code provision which specifically allows a use subject to that approval criterion, the local government should first consider whether the code standard is sufficiently ambiguous that it can be interpreted in a manner that avoids the conflict. If the code can be interpreted to avoid the conflict, that interpretation should be adopted. *Waker Associates, Inc. v. Clackamas County*, 22 Or LUBA 233 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where language used in a local ordinance corresponds to language used in a state statute or statewide planning goal, it is appropriate to interpret those ordinance provisions consistently with available authority for interpreting the relevant statute or goals. *Tice v. Josephine County*, 21 Or LUBA 371 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Absent some expression of legislative intent to the contrary, the legislature is presumed to have intended that the same term used in different sections of the exclusive farm use statute have the same meaning in both sections. *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the legislature intended to allow facilities for intensive training of dogs in the exclusive farm use zone,

it specifically used the term "training" in addition to the term "kennel." ORS 215.213(1)(L). *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Because the statute allowing dog kennels in exclusive farm use zones do not define the term "dog kennel," that term must be given its plain and ordinary meaning, which includes boarding and breeding facilities but does not include training facilities. *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Provisions of a local zoning ordinance should be interpreted in a manner which gives meaning to all parts of the zoning ordinance. *19th Street Project v. City of the Dalles*, 20 Or LUBA 440 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a zoning ordinance specifically lists a use as allowed in one zoning district and fails to specifically list that use in a second zoning district, but includes in the list of permitted uses in the second zoning district a more open ended category of uses, there is an "inference" that the use specifically allowed in the first zoning district is not also allowed in the second zoning district under the open ended use category. *Sarti v. City of Lake Oswego*, 20 Or LUBA 387 (1991).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA is required to determine whether a local government's interpretation of its code is correct and, in doing so, construes the provisions of the code as a whole, giving meaning to each part. *Kittleson v. Lane County*, 20 Or LUBA 286 (1990).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Because ORS 197.015(10)(b)(B) is a subsection of the statute which creates exceptions to LUBA's jurisdiction, LUBA will assume the legislature intended ORS 197.015(10)(b)(B) to be a workable exception, and will not interpret ORS 197.015(10)(b)(B) to require that LUBA conduct a substantive review of urban partition and subdivision decisions to determine whether LUBA has jurisdiction to conduct such a review in the first place. *Southwood Homeowners Assoc. v. City of Philomath*, 20 Or LUBA 279 (1990).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. In so far as possible, LUBA construes relevant local government comprehensive plan and code provisions together, to give meaning to both. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. 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 applications. *White v. City of Oregon City*, 20 Or LUBA 470 (1990).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a comprehensive plan provides that plan "goals, policies, strategies and standards" are "legally binding to land use decisions" when expressed in mandatory language, relevant plan agricultural goals, policies, strategies and standards which are expressed in mandatory language are applicable to a request for conditional use approval for a golf course in the county's exclusive farm use zone.

Von Lubken v. Hood River County, 19 Or LUBA 404 (1990).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. After-the-fact statements by county commissioners and the planning director concerning the intended applicability of plan provisions are not competent legislative history. *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a code provision is specifically amended to provide that the amended code provision does not apply to "minor land divisions," LUBA will not apply that code provision to "minor land divisions" even though such divisions may also satisfy the unamended definitions of subdivision or partition, to which the amended code provision continues to apply. *Nicolai v. City of Portland*, 19 Or LUBA 142 (1990).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Absent a clear expression of intent to the contrary, when a local government adopts a requirement in terms substantially identical to a statutory or Statewide Planning Goal provision, the local code provision must be interpreted as the mimicked statute or goal is interpreted. *O'Brien v. City of West Linn*, 18 Or LUBA 665 (1990).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where an alleged ambiguity in an ordinance definition is not apparent, and the parties do not demonstrate the existence of an ambiguity, LUBA will conclude the ordinance definition is not ambiguous. *Wagner v. City of Yachats*, 17 Or LUBA 1322 (1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the local code draws a distinction between private schools in general and narrowly defines "commercial schools," the term "commercial schools" does not apply to schools offering the broader range of courses typically offered at a community college. *Highway 213 Coalition v. Clackamas County*, 17 Or LUBA 1284 (1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where the local code allows public and private schools as a conditional use, and the code envisions both private schools that are similar to public schools and private schools that are not similar to public schools, the term "schools" is not limited to those with strictly traditional curricula. *Highway 213 Coalition v. Clackamas County*, 17 Or LUBA 1284 (1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The rules that govern statutory construction also apply to the construction of local government ordinances. *Mental Health Division v. Lake County*, 17 Or LUBA 1165 (1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where a county code lists "other uses as authorized by ORS 215.213" as conditional uses in an EFU zone, but does not express an intent to adopt future amendments to ORS 215.213, LUBA will interpret the code to authorize as conditional uses only those uses listed in ORS 215.213 on the date that provision of the county code was adopted. *Mental Health Division v. Lake County*, 17 Or LUBA 1165

(1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. LUBA will interpret ordinance provisions together to give meaning to each part, and will not construe and ordinance provision in a manner which would render another provision meaningless. *League of Women Voters v. Metro Service Dist.*, 17 Or LUBA 949 (1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. The use of the words "may" and "shall" in ORS chapter 215 indicate that the legislature did not intend to require that counties adopting EFU zones incorporate ORS 215.213(1) and (2) verbatim. *Kola Tepee, Inc. v. Marion County*, 17 Or LUBA 910 (1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Statements made 20 years after a statute was enacted are of no value in determining the original legislative intent. *Kola Tepee, Inc. v. Marion County*, 17 Or LUBA 910 (1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Provisions of local government codes should be interpreted together, in a manner which gives meaning to all parts. *Kenton Neighborhood Assoc. v. City of Portland*, 17 Or LUBA 784 (1989).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Post adoption interpretation of a code provision is not competent legislative history of the original intent in adopting the code provision. *Hay v. City of Cannon Beach*, 17 Or LUBA 322 (1988).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Rules of statutory construction apply to construction of municipal ordinances. *Hay v. City of Cannon Beach*, 17 Or LUBA 322 (1988).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where code language is not ambiguous, it is necessary to resort to legislative history to determine legislative intent. *Hay v. City of Cannon Beach*, 17 Or LUBA 322 (1988).

1.1.2 Administrative Law – Interpretation of Law – Rules of Construction. Where two county ordinance provisions control conditional uses and neither indicates that it is not applicable in a particular zone or is the *only* provision applicable to conditional uses in a particular zone, LUBA will conclude that both conditional use approval sections are applicable in that zone. *Rodgers v. Douglas County*, 17 Or LUBA 122 (1988).