

31.2.2 Permits – Types – Conditional Use. Where a governing body concludes that a proposed hotel complies with a comprehensive plan provision requiring that such proposals have “no adverse impact” on the function of a nearby wildlife refuge, arguments at LUBA that the governing body improperly focused on impacts related to the operation of the hotel and did not consider impacts associated with demolition of an existing motel and construction of the new hotel provide no basis for reversal or remand where the petitioner did not clarify why demolition and construction were relevant or specify the adverse impacts of concern in their local appeal statement. *Oregon Coast Alliance v. City of Bandon*, 81 Or LUBA 285 (2020).

31.2.2 Permits – Types – Conditional Use. Where one local code provision requires that “the characteristics of the site [be] suitable for the proposed use considering size, shape, location, topography and natural features”; and where another local code provision requires that development plans “be reviewed to assess the possible presence of any geologic hazard” and provides that, if a geologic hazard is suspected, the developer must submit a report “which satisfactorily evaluates the degree of hazard present and recommends appropriate precautions to avoid endangering life and property and minimize erosion,” and provides that “[t]he burden of proof is on the landowner to show that it is safe to build”; LUBA will defer to the governing body’s interpretation that an applicant’s geologic report related to the “safe to build” criterion, rather than the “suitability” criterion. *Oregon Coast Alliance v. City of Bandon*, 81 Or LUBA 285 (2020).

31.2.2 Permits – Types – Conditional Use. That two applicants for conditional use permits for two solar facilities are contemporaneously seeking partition approval to create two 320-acre parcels from the same parent tract for the proposed facilities does not establish that the proposed facilities will not be on a “single tract,” for purposes of OAR 660-033-0130(38)(f), where there is no evidence, findings, or conditions that such partitions have or will become final and that the two 320-acre parcels have been or will be conveyed, by deed, to third parties. *ODFW v. Lake County*, 81 Or LUBA 300 (2020).

31.2.2 Permits – Types – Conditional Use. A condition of approval requiring an applicant for a conditional use permit for a solar facility to continue working privately with ODFW to agree on a wildlife habitat mitigation plan, outside a public participatory process, and return to the county for approval of the mitigation plan only if the applicant is unable to reach agreement with ODFW, is not sufficient to establish compliance with OAR 660-033-0130(38)(j)(G) for the reasons stated in *Gould v. Deschutes County*, 216 Or App 150, 171 P3d 1017 (2007), where it does not require a subsequent county proceeding on the mitigation plan and where it does not specify that the subsequent proceeding will be infused with the same participatory rights as the initial conditional use permit proceeding. *ODFW v. Lake County*, 81 Or LUBA 300 (2020).

31.2.2 Permits – Types – Conditional Use. Where a local code provision requires that a proposed conditional use be “consistent with the character of the area,” and where nothing in the code defines or describes the relevant study area for purposes of the provision, a local government does not err by expanding the scope of the study area beyond that described in the application. *Tarr v. Multnomah County*, 81 Or LUBA 242 (2020).

31.2.2 Permits – Types – Conditional Use. Where a local code allows community service and residential uses in the same zone, a local government does not err by concluding that a proposed

community service use is “consistent with the character of the area,” even though it would generate more traffic or noise impacts than a typical residential use, where almost any community service use would generate more traffic and noise impacts than a typical residential use. *Tarr v. Multnomah County*, 81 Or LUBA 242 (2020).

31.2.2 Permits – Types – Conditional Use. A condition of approval requiring the applicant to deploy flaggers at an intersection to inform attendees that parking is unavailable and deny them entry when parking demand exceeds the available capacity is not inadequate merely because it does not duplicate legal requirements that flaggers receive special training and permits. *Tarr v. Multnomah County*, 81 Or LUBA 242 (2020).

31.2.2 Permits – Types – Conditional Use. For purposes of a local code provision requiring that a proposed conditional use not “alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located,” the primary use allowed in the Rural Residential Farm Forest 5-Acre zone is the use and occupancy of a dwelling structure, and the local government does not misinterpret the provision in finding that passing by the proposed conditional use on the way to a residence does not limit that use. *York v. Clackamas County*, 81 Or LUBA 20 (2020).

31.2.2 Permits – Types – Conditional Use. Where a significant resource overlay zone provision requires that (1) resource sites not be altered or impacted to a degree that destroys their significance, (2) the proposed development not result in the loss of habitat for threatened or endangered species, (3) all feasible alternatives to the development that would not result in a substantial adverse impact on identified resource values be considered and rejected, (4) the development be sited on the property in such a manner that minimizes adverse impacts on identified resources, and (5) documentation be provided regarding requirements for state or federal permits or licenses and that appropriate resource management agencies have reviewed the development proposal against their plans, policies, and programs, the local government does not err in concluding that that provision applies at the development stage rather than the PAPA stage. *VanSickle v. Klamath County*, 80 Or LUBA 241 (2019).

31.2.2 Permits – Types – Conditional Use. A condition of approval requiring an applicant that has applied to site a solar facility in an area currently used for growing Christmas trees to offer a fire safety training course to the local fire district is inadequate to establish that “[t]he proposed use will not * * * significantly increase risks to fire suppression personnel” for purposes of OAR 660-006-0025(5)(b) and local code provisions implementing that rule. *Chang v. Clackamas County*, 80 Or LUBA 321 (2019).

31.2.2 Permits – Types – Conditional Use. Where a local code provision requires a finding that “[t]he proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use,” and where the record includes undisputed expert testimony that fire and emergency access are inadequate unless a proposed trail and its bridges are built to certain standards, it is insufficient for the local government to state, without any supporting evidence, that it is “feasible” to design the trail and bridges to provide adequate

fire and emergency access and then punt all determinations regarding trail and bridge design to a subsequent master planning process. *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

31.2.2 Permits – Types – Conditional Use. Where a local code provision requires (1) that an applicant for an extension of a conditional use permit on resource-zoned lands “state[] reasons that prevented [them] from beginning or continuing development within the approval period” and (2) that the local government determine that those are “reasons for which the applicant was not responsible,” a local government interpretation that the provision may be satisfied where the reason for the delay is that additional state or federal approvals have been applied for, but not yet secured, even where the application for such state or federal approval proposes development which differs from that approved by the conditional use permit, is not inconsistent with the express language of the provision and therefore provides no basis for reversal or remand under ORS 197.829(1)(a). *Williams v. Coos County*, 79 Or LUBA 352 (2019).

31.2.2 Permits – Types – Conditional Use. Where one local code provision authorizes the local government to grant “an extension of up to two (2) years” for a conditional use permit on non-resource lands, and another provision provides that “[a]dditional extensions may be applied,” a local government interpretation of those provisions as allowing supplemental extensions beyond the one allowed under the first provision is supported by the plain meaning of the word “additional,” is not inconsistent with the express language of either provision, and therefore provides no basis for reversal or remand under ORS 197.829(1)(a). *Williams v. Coos County*, 79 Or LUBA 352 (2019).

31.2.2 Permits – Types – Conditional Use. Where a local code provision provides that issuance of a conditional use permit requires a determination that “[t]he proposed use is or may be made compatible with existing adjacent permitted uses and other uses permitted in the underlying zone,” an interpretation by the local government that it need not consider the impact of the proposed use on property values and neighbor peace of mind is not inconsistent with the provision’s express language or underlying policies. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

31.2.2 Permits – Types – Conditional Use. Where a local code provision provides that issuance of a conditional use permit (CUP) requires a determination that “[t]he proposed use is or may be made compatible with existing adjacent permitted uses and other uses permitted in the underlying zone,” a local government decision granting a CUP is not supported by substantial evidence where it does not identify and describe all of the existing and permitted uses on adjacent properties and where it fails to analyze or measure the extent of the potential impacts of the proposed use and instead proceeds straight to mitigation measures. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

31.2.2 Permits – Types – Conditional Use. A county provision, which requires the signature of all owners of the subject property on an application for a conditional use permit, may be satisfied by a county-imposed condition requiring that a property owner sign the conditional use permit application before any building permits may issue, where the county provision grants permission to the hearings officer to impose conditions the hearings officer “deems necessary” to fulfill the purpose and intent of the county’s code. *Harris v. Marion County*, 78 Or LUBA 209 (2018).

31.2.2 Permits – Types – Conditional Use. Where a county code provision requires a finding that development of a proposed solar facility will “not result in unnecessary soil erosion or loss,” and includes a provision that this finding “*may* be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual,” and “[t]he approved plan *shall* be attached to the decision *as a condition of approval*,” that provision allows an applicant and the county the *option* of relying on a qualified soil and erosion control plan to satisfy the provision and, if that option is followed, by imposing a condition of approval that requires compliance with the approved plan. The phrase “attached to the decision as a condition of approval” is a term of art that does not mean that the plan must be physically attached to the decision. *Harris v. Marion County*, 78 Or LUBA 209 (2018).

31.2.2 Permits – Types – Conditional Use. Where a county code provision requires that a proposed solar facility may not “create unnecessary negative impacts on agricultural operations,” including dividing a field or multiple fields “in such a way that creates small or isolated pieces of property that are more difficult to farm,” and placing solar facility components on lands in a manner that “could disrupt common and accepted farming practices,” a hearings officer’s decision errs in concluding that a 12-acre solar facility located on a 14.15-acre lot will not create an isolated strip of cultivated land because as a matter of simple arithmetic, some portion of the 14.15-acre lot will remain outside the 12-acre solar facility. *Harris v. Marion County*, 78 Or LUBA 209 (2018).

31.2.2 Permits – Types – Conditional Use. A decision to grant temporary approval of driveway access is not a decision to modify a previous conditional use approval decision that imposed a condition that required the applicant to obtain fire department approval of the proposed driveway access. *Seits v. Yamhill County*, 77 Or LUBA 310 (2018).

31.2.2 Permits – Types – Conditional Use. Where an applicant proposes to bifurcate a proposed business development into two segments, one to be approved as a conditional use, and another to be approved as a home occupation, to avoid application of permit standards that would otherwise prohibit the business use viewed as a whole, both sets of permit requirements potentially apply to any components of the segmented use that are shared or overlap. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

31.2.2 Permits – Types – Conditional Use. Where in order to avoid code prohibitions on “external evidence” of a home occupation an applicant attempts to authorize all outdoor processing associated with a log home manufacturing business under a conditional use permit for the primary processing of forest products, and all indoor processing associated with the business as part of a home occupation, any activities that use shared equipment, vehicles or employees, such as transporting logs from the outdoor primary processing site to the indoor secondary processing site, are not authorized exclusively under the primary processing permit, but are also subject to the prohibition on external evidence required of the home occupation permit. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

31.2.2 Permits – Types – Conditional Use. The primary processing of logs pursuant to a conditional use permit for the primary processing of forest products is not itself subject to home occupation standards, even if the logs are later transported to a structure on the property for

secondary processing under a home occupation permit. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

31.2.2 Permits – Types – Conditional Use. An asphalt batch plant that received a conditional use permit under the conditional use permit criteria that applied at the time the plant was approved is not a nonconforming use, and the local code provisions that govern discontinuance of a nonconforming use do not apply to an application that seeks a comprehensive plan text and zoning map amendment to add additional property that is adjacent to the conditional use to the county’s inventory of significant aggregate sites. *Pioneer Asphalt, Inc. v. Umatilla County*, 71 Or LUBA 65 (2015).

31.2.2 Permits – Types – Conditional Use. Where applicable land use regulations require that a proposal to modify a previously approved conditional use must be “consistent” with previously approved conditional use, and the proposal would eliminate the previously approved composting operation and make minor changes to the previously approved topsoil mining operation, the modified conditional use is correctly viewed as “consistent” with the previously approved conditional use. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

31.2.2 Permits – Types – Conditional Use. In considering whether the proposed modifications to a previously approved conditional use comply with conditional use approval criteria, if legal issues raised in the modification proceedings are relevant issues regarding approval standards that could not have been raised when the original proposal was approved, the local government is required to address those issues. Conversely, if the arguably relevant issues raised in the modification proceedings could have been fully raised when the original proposal was approved, those legal issues are not a product of the modification and the local government is not required to consider those issues. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

31.2.2 Permits – Types – Conditional Use. Where a previously approved conditional use is being modified to eliminate one part of the previously approved use, and conditions of that previous approval are to be modified or eliminated, where the original condition was imposed solely to ensure the part of the conditional use that is to be eliminated is consistent with relevant approval standards, no explanation is required to eliminate such conditions of approval. However, where it is not clear whether the original condition of approval was imposed at least in part to ensure that part of the conditional use that is to be retained is consistent with one or more relevant approval standards, and an issue is raised concerning whether the proposed modification or elimination of the condition would cause the modified conditional use to violate one or more applicable approval standards, the local government is obligated to explain why the condition can be eliminated or modified without causing the modified conditional use to no longer comply with relevant approval standards. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

31.2.2 Permits – Types – Conditional Use. LUBA will reject a city council’s interpretation of a code provision allowing a property owner to site a recreational vehicle (RV) on the property for “temporary living purposes” to require that the RV be accessory to or in conjunction with a permanent dwelling on the property, where nothing in the applicable code provision expressly or impliedly requires a dwelling, and the city has expressly required, in other inapplicable code

provisions, that an RV be an accessory use to or be in conjunction with a dwelling. *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011).

31.2.2 Permits – Types – Conditional Use. A hearings officer does not err in concluding that modifying a condition of approval imposing a 20-year deadline to complete development, to allow an additional three years to complete development, is not “materially inconsistent” with the original condition of approval, where the additional time represents only a 15 percent increase and nothing in the original permit approval suggests that the original 20-year completion deadline was intended to be inflexible. *Connecting Eugene v. City of Eugene*, 61 Or LUBA 439 (2010).

31.2.2 Permits – Types – Conditional Use. A reasonable decision maker could conclude that the applicant for a proposed motorcycle race track failed to demonstrate compliance with an approval standard requiring that the property act as a buffer between urban and agricultural uses, which the county interpreted to require evidence that the race track, as mitigated, would externalize less dust than would agricultural use of the property, where the applicant failed to present any evidence quantifying dust impacts, comparing dust impacts of farm uses and the race track, or estimating the effectiveness of mitigation. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

31.2.2 Permits – Types – Conditional Use. LUBA will reverse a county governing body’s code interpretation that a conditional use allowed in an Acreage Residential zone that generates any amount of dust leaving the property must be denied because it is not in harmony with the purpose of the zone to buffer urban uses from farm uses, where the zone allows a number of dust-generating uses as permitted and conditional uses in the zone, including farm use, and under the county’s interpretation few if any of those uses could ever be approved in the zone. *Davis v. Polk County*, 58 Or LUBA 1 (2008).

31.2.2 Permits – Types – Conditional Use. LUBA will remand a decision determining that a conditional use is inconsistent with one of seven purposes of the underlying zone, where it is not clear whether the county must address each of the seven purposes and determine whether the proposed use is, on balance consistent with those purposes, or whether inconsistency with a single zone purpose is sufficient to deny the application, and the county’s decision does not address the issue. *Davis v. Polk County*, 58 Or LUBA 1 (2008).

31.2.2 Permits – Types – Conditional Use. A code provision that lists additional conditional use restrictions that a county may impose to protect certain natural resources is an approval standard, in the sense that it authorizes the county to impose additional conditions if found to be necessary, and the county could, theoretically, deny the application if it concluded that no feasible conditions could be crafted that the county will protect the identified resources. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

31.2.2 Permits – Types – Conditional Use. Under ORS 227.178(4), where a city has notified a conditional use permit applicant that the application requires additional supporting information, and the applicant fails to provide the information and fails to provide the city notice that the applicant will not provide the requested information, the city may treat the application as void. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

31.2.2 Permits – Types – Conditional Use. When a conditional use permit (CUP) has a conditional of approval that the CUP “will become invalid” if specified actions are not taken before a specified deadline or an extension of the deadline is not granted, and the applicant neither completes the specified actions nor seeks an extension, the local government may not grant an extension of the CUP after the time for receiving an extension has expired and the CUP is rendered invalid. *Michaels v. Douglas County*, 53 Or LUBA 16 (2006).

31.2.2 Permits – Types – Conditional Use. Federal law preempts a local determination that a proposed cellular communications facility is unsafe where the Federal Aviation Administration (FAA) has issued a “Determination of No Hazard” under FAA rules. *U.S. Cellular v. Klamath County*, 53 Or LUBA 442 (2007).

31.2.2 Permits – Types – Conditional Use. Where a 1995 conditional use permit conceptually approved cemetery uses on a portion of the site and required a buffer between cemetery uses on that portion and adjoining residential uses, LUBA will affirm a hearings officer determination that modification of the 1995 permit is necessary to develop that portion of the site with non-cemetery uses or to dispense with the buffer required in the 1995 permit. *Wiper v. City of Eugene*, 47 Or LUBA 21 (2004).

31.2.2 Permits – Types – Conditional Use. Where a conditional use permit condition can reasonably be interpreted to require a 75-foot vegetative buffer between cemetery uses and residential uses, and the city’s code allows modifications to a conditional use permit only if consistent with the original conditions, LUBA will affirm a hearings officer’s determination that a proposed modification that provides for no vegetative buffer between cemetery and residential uses is inconsistent with the original conditions. *Wiper v. City of Eugene*, 47 Or LUBA 21 (2004).

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

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

31.2.2 Permits – Types – Conditional Use. Where a city zoning ordinance permits consideration of consolidated applications and it is not apparent that an independent process is available to consider related permits, and petitioners raised the issue of compliance with standards required for the related permits during the pendency of a conditional use application, the city erred by failing to address petitioners’ argument that the related permit standards must be satisfied before the

conditional use permit could be approved. *Monogios and Co. v. City of Pendleton*, 42 Or LUBA 291 (2002).

31.2.2 Permits – Types – Conditional Use. Under a code standard that allows only *de minimis* traffic impacts on failing intersections, the county is in a position to find compliance with the standard only if it quantifies the traffic volume that is expected to pass through intersections notwithstanding conditions designed to avoid impacts and determines that such traffic volume is *de minimis*, or if it imposes conditions sufficient on their face to ensure that expected impacts will be *de minimis*. *K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001).

31.2.2 Permits – Types – Conditional Use. Conditions imposed to ensure that only *de minimis* traffic volumes from a proposed recycling facility impact nearby failing intersections during certain times are insufficient and unenforceable, where the county’s decision fails to (1) define what *de minimis* traffic volumes are, (2) specify the times when the conditions apply, and (3) impose conditions or identify solutions that a reasonable person would find adequate to ensure that traffic associated with the facility uses a longer alternate route rather than the short direct route through failing intersections. *K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001).

31.2.2 Permits – Types – Conditional Use. An assignment of error that a city erred by approving a floodplain permit in the absence of a valid conditional use permit for the proposed use provides no basis for reversal or remand where petitioner fails to demonstrate that a conditional use permit for the proposed use must be obtained prior to obtaining a floodplain permit. *Willhoft v. City of Gold Beach*, 39 Or LUBA 353 (2001).

31.2.2 Permits – Types – Conditional Use. Where a city imposes conditions of approval requiring external street improvements as part of a land use decision approving a conditional use permit, the aspects of the decision requiring external street improvements are not subject to the exception to the definition of land use decision at ORS 197.015(10)(b)(D), notwithstanding that if the required improvements were imposed in a separate decision not involving conditional use approval, those improvements might fit within the exception. *Terra v. City of Newport*, 36 Or LUBA 582 (1999).

31.2.2 Permits – Types – Conditional Use. The judicial doctrine of vested rights does not apply to development allowed under a conditional use permit, where the permit is approved under an ordinance obligating the user to commence construction within six months or request an extension from the city. *Heidgerken v. Marion County*, 35 Or LUBA 313 (1998).

31.2.2 Permits – Types – Conditional Use. A governing body’s interpretation of a local provision is within the discretion afforded by ORS 197.829(1) and *Clark v. Jackson County*, where the local ordinance requires that development allowed under a conditional use permit be commenced within six months in order to become effective, and the governing body interprets the ordinance to mean that development has commenced when the applicant has complied with all conditions precedent and obtained all required permits. *Heidgerken v. Marion County*, 35 Or LUBA 313 (1998).

31.2.2 Permits – Types – Conditional Use. An application for an extension of a conditional use permit involves the “discretionary approval of a proposed development of land” and is subject to the requirement at ORS 215.416 that approval or denial of a permit be subject to standards and

criteria, where the local code contains no standards governing permit extensions and thus grants unfettered discretion to the county to approve or deny the extension. *Heidgerken v. Marion County*, 35 Or LUBA 313 (1998).

31.2.2 Permits – Types – Conditional Use. Concern that a campfire may cause a forest fire that burns down neighboring structures is not a relevant consideration in determining whether a proposed use will alter the character of the surrounding area by limiting or impairing primary uses. *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998).

31.2.2 Permits – Types – Conditional Use. Where a previous, unappealed development is not part of the conditional use approval proposal in question, a local government cannot require a conditional use permit for that development as part of its evaluation of the proposed use. *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998).

31.2.2 Permits – Types – Conditional Use. In complying with the city’s demand that it file an application for a conditional use permit in order to continue its operation, petitioner accepted the validity of that demand for the purposes of the proceeding on its application, and LUBA therefore cannot review the decision to require a conditional use permit. *Recovery House VI v. City of Eugene*, 33 Or LUBA 327 (1997).

31.2.2 Permits – Types – Conditional Use. A use permitted outright cannot be a conditional use. *Northwest Environmental Adv. v. City of Portland*, 33 Or LUBA 45 (1997).

31.2.2 Permits – Types – Conditional Use. LUBA will defer under ORS 197.829(1) to a local government’s interpretation of conditional use permit criteria even when that interpretation is at odds with LUBA’s own interpretation of identical statutory criteria governing an application for a nonfarm dwelling. *Ray v. Douglas County*, 32 Or LUBA 388 (1997).

31.2.2 Permits – Types – Conditional Use. The county fails to establish that, under local code, a second dwelling is authorized as a conditional use in an EFU zone where the findings do not explain why the proposed dwelling is authorized and do not explain when the primary dwelling was established or whether its use is resource-related. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

31.2.2 Permits – Types – Conditional Use. Findings are inadequate to establish that a proposed use does or can satisfy the definition of “light industrial business” when there are no factual findings regarding the number of employees necessary for the proposed use. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

31.2.2 Permits – Types – Conditional Use. That an applicant’s personal expertise is critical in designing a proposed use does not preclude compliance with a local ordinance requirement that a conditional use permit run with the land. Neither is it necessary to condition approval of the use on continuing participation by that applicant, since it is not dependent on her for its operation. *Martin v. Jackson County*, 30 Or LUBA 317 (1996).

31.2.2 Permits – Types – Conditional Use. That an existing conditional use asphalt batch plant could be a permitted use under a county’s mineral and aggregate overlay zone does not require that the county incorporate the conditional use into a decision approving application of the overlay zone to an area including the existing conditional use or that the county re-approve the conditional use as part of the decision applying the overlay zone. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

31.2.2 Permits – Types – Conditional Use. A reasonable person would not conclude that a code conditional use permit standard requiring a proposed development to be timely considering the adequacy of storm drainage systems is satisfied, where there is no evidence in the record concerning the existence or adequacy of storm drainage facilities to handle anticipated runoff from the proposed development. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

31.2.2 Permits – Types – Conditional Use. Where conditional use approval is sought for the construction of a building to serve an existing use, whether that existing use is lawful is relevant to approval of the proposed building. *Penland v. Josephine County*, 29 Or LUBA 213 (1995).

31.2.2 Permits – Types – Conditional Use. Under ORS 433.763(1)(c), a county may subject outdoor mass gatherings of more than 120 hours duration to conditional use permit land use regulations. *Fence v. Jackson County*, 29 Or LUBA 147 (1995).

31.2.2 Permits – Types – Conditional Use. Where an improvement agreement signed by a county is limited to implementing a conditional use permit previously approved by the county, and does not modify that conditional use permit, the improvement agreement does not require application of land use standards and does not constitute a “land use decision,” as that term is defined by ORS 197.015(10). *Franklin v. Deschutes County*, 29 Or LUBA 79 (1995).

31.2.2 Permits – Types – Conditional Use. A code conditional use standard requiring reasonable compatibility with, and no more than minimal impact on, “appropriate development” of surrounding properties authorizes the local government to consider a proposed conditional use’s compatibility with, and impact on, future development of vacant properties. *Horizon Construction, Inc. v. City of Newberg*, 28 Or LUBA 632 (1995).

31.2.2 Permits – Types – Conditional Use. A hearings officer’s interpretation of a conditional use permit for a “tourist park” as not allowing placement of mobile homes within the approved “tourist park,” as that term is defined by the local code, is reasonable and correct. *Jones v. Lane County*, 28 Or LUBA 193 (1994).

31.2.2 Permits – Types – Conditional Use. A county governing body may interpret a code conditional use standard requiring that a proposed use have minimal adverse impacts compared to the impacts of development “permitted outright” as inapplicable in a zoning district that lists no outright permitted uses. *Mazeski v. Wasco County*, 28 Or LUBA 178 (1994).

31.2.2 Permits – Types – Conditional Use. Where local conditional use approval standards do not specifically refer to impacts on property values, but rather to compatibility with “uses” and “land use patterns” and changes in “accepted farm or forest practices” or their cost, a local

governing body is within its discretion under ORS 197.829 in interpreting such standards not to require consideration of a proposed conditional use's impact on property values. *Tucker v. Douglas County*, 28 Or LUBA 134 (1994).

31.2.2 Permits – Types – Conditional Use. Where a particular activity is allowed as a conditional use, and is subject to criteria specifically and solely applicable to such activity, the governing body acts within its interpretive discretion under ORS 197.829 in determining such activity is not also subject to criteria generally applicable to conditional uses in the zone. *Cole v. Columbia County*, 28 Or LUBA 62 (1994).

31.2.2 Permits – Types – Conditional Use. Where the code provides a conditional use permit does not expire if “substantial construction” has occurred, and that “substantial construction” means 10 percent of the total project value has been expended for construction authorized under a development permit, the local government erred by counting expenditures for a culvert and fill creek crossing that were made when the permits issued authorized only a bridge crossing. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

31.2.2 Permits – Types – Conditional Use. Elevation plans submitted by an applicant to establish compliance with code “physical compatibility” requirements become part of the applicant’s conditional use proposal, and it is not necessary for the local government to impose compliance with these plans as a condition of approval in order to rely on them in approving the proposed development. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

31.2.2 Permits – Types – Conditional Use. Where petitioner argues the local government erred by approving a conditional use permit without the consent of all owners of the subject property, but identifies no plan, code or other legal standard requiring that such consent be obtained, LUBA cannot grant relief. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

31.2.2 Permits – Types – Conditional Use. A local government’s approval of a conditional use permit for a “public air park” does not grant approval for a recreational parachuting center, where the site plan for the public air park does not show a recreational parachuting center was either contemplated or approved. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

31.2.2 Permits – Types – Conditional Use. Where under certain provisions of a local enactment, consideration of the geologic stability of the subject site would be relevant to the conditional use permit approval process, but other code provisions create a separate geologic hazard review process that may be initiated at any time prior to or in conjunction with filing an application for any required local permit, LUBA will defer to the local government’s interpretation that it is not required to address geologic stability as part of the conditional use permit process. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

31.2.2 Permits – Types – Conditional Use. Where the local code provides that a conditional use permit expires one year after it is approved, unless construction occurs demonstrating the CUP has been “used,” and where the code also prohibits the local government from issuing building or other permits required for construction until appeals have been “completed,” the running of the one-year period for “using” a conditional use permit is tolled during those periods of time when a building

or other permit necessary to “use” the conditional use permit cannot properly be issued due to an appeal. *Weeks v. City of Tillamook*, 24 Or LUBA 155 (1992).

31.2.2 Permits – Types – Conditional Use. In evaluating the compliance of an application for a conditional use permit for a bed and breakfast with a local traffic impacts approval standard, it is proper to evaluate the impacts of a reasonable residential use of the dwelling, together with the proposed bed and breakfast use. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

31.2.2 Permits – Types – Conditional Use. Where the local code lists uses as conditionally permitted, such listing does not, of itself, imply that the local government must approve all applications for conditional uses or that it is limited to the imposition of conditions of approval. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

31.2.2 Permits – Types – Conditional Use. In the absence of a local code requirement to the contrary, a local government has no legal obligation to impose conditions of approval in lieu of denying an application for conditional use approval. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

31.2.2 Permits – Types – Conditional Use. Where the local code states “nothing construed herein shall be deemed to require the [local government] to grant a Conditional Use Permit,” a local government may deny a conditional use permit if the development, as proposed, does not satisfy applicable approval standards. In such instance, the local government is not *required* to impose conditions on the proposed development to attain compliance with the approval standards. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

31.2.2 Permits – Types – Conditional Use. A local code requirement that a review body may not consider a request for a conditional use permit within one year following a previous denial of “such” request, prohibits submission of a conditional use permit application for the same use on the same property as previously denied. It does not prohibit the submission of a conditional use permit application for a different use of the property. *Silani v. Klamath County*, 22 Or LUBA 735 (1992).

31.2.2 Permits – Types – Conditional Use. Where a local code provision prohibits submission of an application for a conditional use permit for a use previously denied within one year of denial, it is error for the local government to refuse to accept evidence concerning whether a proposed conditional use is the same as the conditional use previously denied. *Silani v. Klamath County*, 22 Or LUBA 735 (1992).

31.2.2 Permits – Types – Conditional Use. That a previously approved zone change included a condition providing that if a conditional use permit for a mobile home park on the subject property is not obtained, the property would revert to its previous zoning, does not make the merits of the previous rezoning decision subject to LUBA’s review in an appeal of the local government decision approving the conditional use permit. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

31.2.2 Permits – Types – Conditional Use. Where the local code defines public facilities to include public schools, and contains a standard requiring that conditional uses be timely considering the adequacy of public facilities, the local government must determine that at the time the proposed development will occur public schools will be adequate to serve the proposed development. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

31.2.2 Permits – Types – Conditional Use. Where the local code establishes specific requirements for applications for mobile home parks, and also requires that the site plan for a proposed conditional use include information specifically required by the code for the proposed use, a conditional use permit application for a mobile home park must also include the information required for applications for mobile home parks. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

31.2.2 Permits – Types – Conditional Use. Whether a proposed sewage treatment facility will produce odors is a relevant consideration in determining compliance with a local conditional use permit standard requiring findings that the “location, size, design, and operation are compatible with and will not adversely affect the livability or appropriate development of abutting properties in the surrounding neighborhood.” *Sitsler v. City of Mill City*, 22 Or LUBA 125 (1991).

31.2.2 Permits – Types – Conditional Use. Where the local code does not contain a specific purpose statement for a zoning district, determining a proposed conditional use is similar to, and produces no significant impacts different from those produced by, uses permitted outright in the zoning district is a correct means of determining compliance with a code requirement that a conditional use be in harmony with the purpose and intent of the zoning district. *Brandt v. Marion County*, 22 Or LUBA 74 (1991).

31.2.2 Permits – Types – Conditional Use. Performance standards are not necessary prerequisites to issuance of a conditional use permit. However, a code standard may be a performance standard, a permit approval standard, or some combination of the two. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

31.2.2 Permits – Types – Conditional Use. A local government may impose conditions and rely on those conditions in determining that an application for discretionary permit approval meets applicable approval standards. However, there is no general requirement that a local government *must* apply conditions to modify a proposal so that applicable standards are met. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

31.2.2 Permits – Types – Conditional Use. A local government cannot deny building permits for approved conditional uses based on subsequent local code interpretations, where the subject conditional use permit remains effective and was not appealed locally or to LUBA. *Townsend v. City of Newport*, 21 Or LUBA 286 (1991).

31.2.2 Permits – Types – Conditional Use. In considering a request for conditional use approval, a local government may consider the future impact of proposed highway intersection improvements on the proposal. *Wheeler v. Marion County*, 20 Or LUBA 379 (1990).

31.2.2 Permits – Types – Conditional Use. A county has a legitimate planning interest in assuring adequate vehicular circulation within a zoning district applicable to highway interchanges. This legitimate planning interest includes both access to properties abutting public rights-of-way and circulation within such properties. *Wheeler v. Marion County*, 20 Or LUBA 379 (1990).

31.2.2 Permits – Types – Conditional Use. Conditions of approval must have some reasonable connection with the use proposed. A condition requiring a demonstration that adequate on-site vehicular circulation will be possible has such a reasonable connection to a proposed expansion of an existing use which may make internal vehicular circulation more difficult or impossible in view of planned highway intersection improvements. *Wheeler v. Marion County*, 20 Or LUBA 379 (1990).

31.2.2 Permits – Types – Conditional Use. Where a local code lists the undefined term “commercial riding” as a use which may be conditionally permitted in a zoning district, and the general approval standards for conditional uses require that they “not significantly impact [adjoining] uses,” the potential impacts of a proposed use are relevant only to compliance with the conditional use approval standard, not to determining whether the proposed use constitutes “commercial riding.” *Kittleson v. Lane County*, 20 Or LUBA 286 (1990).

31.2.2 Permits – Types – Conditional Use. Where city regulations governing applications for conditional use approval do not make all contiguous property owned by an applicant subject to the conditional use review, and an applicant files a conditional use application for only a portion of his property, the city does not have authority to impose conditions on contiguous property owned by the applicant which is not the subject of the application. *Goodman v. City of Portland*, 19 Or LUBA 289 (1990).

31.2.2 Permits – Types – Conditional Use. Where a code standard requires a conditional use to have no more than *minimal impact* on the livability and appropriate development of abutting properties and the surrounding neighborhood, the local government must (1) identify the qualities constituting the livability and appropriate development of abutting properties and the surrounding neighborhood, and (2) determine whether the proposed use will have more than a minimal impact on the identified qualities. Whether the proposed conditional use will have fewer impacts than uses permitted outright in the zone is immaterial. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

31.2.2 Permits – Types – Conditional Use. Where ordinance provides that conditional use permit applications may be approved, approved with conditions or denied, and states the approval authority must find that the proposed use is not in violation of “the appropriate regulations and standards” in the ordinance, the ordinance provides that a conditional use permit may be approved or denied based on mandatory criteria located elsewhere in the zoning ordinance. *Beck v. City of Tillamook*, 18 Or LUBA 587 (1990).