31.2.4 Permits – Types – Other. In determining whether proposed "agri-tourism or other commercial events or activities" are "incidental and subordinate to existing commercial farm use of the tract" for purposes of ORS 215.283(4)(d)(A), a county errs in relying on a comparison of the frequency of commercial events with the frequency of commercial farming activity on the property to the exclusion of any relevant circumstances, including the nature, intensity, and economic value of the respective uses, that bear on whether the existing commercial farm use remains the predominant use of the tract. *Friends of Yamhill County v. Yamhill County*, 81 Or LUBA 276 (2020).

31.2.4 Permits – Types – Other. Establishing that proposed "agri-tourism or other commercial events or activities" are "necessary to support the commercial farm uses or the commercial agricultural enterprises in the area" for purposes of ORS 215.283(4)(d)(A) is a relatively high hurdle: the county must find that the events are essential in order to maintain the existence of either the commercial farm uses on the subject property or the commercial agricultural enterprises in the area. *Friends of Yamhill County v. Yamhill County*, 80 Or LUBA 135 (2019).

31.2.4 Permits – Types – Other. A demonstration that proposed "agri-tourism or other commercial events or activities" are "necessary to support" an approved commercial activity in conjunction with farm use under ORS 215.283(2)(a), such as a brewery, is not sufficient to demonstrate that the events are "necessary to support" an "existing commercial farm use of the tract," such as the growing of filberts, for purposes of ORS 215.283(4)(d)(A), even where revenue from the brewery "supplements" revenue from the growing of filberts. *Friends of Yamhill County v. Yamhill County*, 80 Or LUBA 135 (2019).

31.2.4 Permits – Types – Other. Where an applicant has conducted both festival-related uses and non-festival-related park and campground uses on property zoned Rural Residential and Impacted Forest, where the festival-related uses are verified nonconforming uses, and where the applicant applies for a special use permit to legalize the non-festival-related park and campground uses, LUBA will affirm the county's interpretation that its nonconforming use provisions do not apply to the special use permit application where the county expressly explains that the special use permit does not authorize festival-related uses and where the petitioners identify no law preventing the county from issuing permits that have the effect of legalizing special uses that have been occurring independent of a preexisting nonconforming uses. *Klein v. Lane County*, 80 Or LUBA 287 (2019).

31.2.4 Permits – Types – Other. A county decision determining vested rights involves the "discretionary approval of a proposed development of land," and is therefore a "permit" decision under ORS 215.402(4). Such decisions must be processed under procedures consistent with ORS 215.416, regardless of whether a party's request for the "permit" decision is accompanied by requests for non-"permit" decisions, whether the request is labeled or easily identifiable as an "application" for a "permit," or whether the party affirmatively requests the required procedures. *Gillette v. Lincoln County*, 79 Or LUBA 549 (2019).

31.2.4 Permits – Types – Other. LUBA will affirm a governing body's code interpretation of a county zoning ordinance that provides that a permit extension may be granted if the "approval criteria for the original decision found in a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance have not changed," and the county board of commissioners

interprets "have not changed" to mean an administrative or legislative amendment to the administratively enacted or codified law described in the same provision, and not include decisional law not that is not administratively enacted or codified, as long as such interpretation is "plausible." *Hood River Valley Residents' Committee v. Hood River County*, 78 Or LUBA 478 (2018).

31.2.4 Permits – Types – Other. A city is not required to defer to a permit applicant's characterization of its proposal to remove up to 500,000 cubic yards of rock from a five-acre site as mere site preparation that is necessary for a possible future proposal for residential development. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.2.4 Permits – Types – Other. Zoning classification decisions are often hypothetical and based on stated assumptions. If a methadone clinic that is found to be permitted in a zoning district thereafter provides services that go beyond the services specified in the application for a zoning classification decision, that may be addressed in an enforcement action and the zoning classification decision will not shield the applicant from such an enforcement action regarding activities that are not mentioned in the application. *Mariposa Townhouses v. City of Medford*, 68 Or LUBA 479 (2013).

31.2.4 Permits – Types – Other. A city's failure to enter a zoning classification decision into a registry as required by ORS 227.175(11)(a) does not make the decision something other than a zoning classification decision. *Mariposa Townhouses v. City of Medford*, 68 Or LUBA 479 (2013).

31.2.4 Permits – Types – Other. Under a code provision requiring that the applicant for development within a riparian area demonstrate that "reasonable steps" have been taken to reduce adverse impact on the environment, it is not a "reasonable step" to require the applicant to forego constructing a short driveway connecting to the adjacent public right-of-way and instead require obtaining lengthy driveway easements over several adjoining properties to connect the subject property to a different, non-adjacent public street. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

31.2.4 Permits – Types – Other. Where a petitioner does not challenge a hearings officer's finding that petitioner's use of his property for a wedding event required review and county approval under one code provision, and petitioner does not allege his wedding event received county review and approval, petitioner's arguments that the use could have been approved under a different code provision provide no basis for reversal or remand. *Reed v. Jackson County*, 61 Or LUBA 253 (2010).

31.2.4 Permits – Types – Other. Even if a local government erred in concluding that noise and air quality standards are "performance standards" rather than approval criteria applicable to a proposed transportation center, that error is harmless where the noise and air quality standards apply only to specified uses, and the specified uses do not include anything resembling the proposed transportation center. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

31.2.4 Permits – Types – Other. A land use compatibility statement that determines the appropriate zoning classification for a proposed use of land within an urban growth boundary may

constitute a "zoning classification" decision as defined by ORS 227.160(2)(b), and thus not constitute a statutory "permit" that would require the city to provide notice and an opportunity for hearing. *Hallowell v. City of Independence*, 53 Or LUBA 165 (2006).

31.2.4 Permits – Types – Other. The fact that wineries are a permitted use in EFU zones under ORS 215.213(1) and 215.283(1) does not mean that wineries are "agricultural uses" permitted in a rural residential zone, where the code definition of "agricultural uses" does not include wineries, and wineries are not among the uses allowed in the rural residential zone. *Roth v. Jackson County*, 40 Or LUBA 531 (2001).

31.2.4 Permits – Types – Other. A decision to extend the term of an expired conditional use permit is a discretionary approval of a proposed development of land and constitutes a "permit" as that term is defined by ORS 227.160(2). *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

31.2.4 Permits – Types – Other. A zoning ordinance that lacks provisions governing signs and that is nevertheless applied to evaluate whether a proposed billboard is an accessory use to industrial and commercial uses allowed in the relevant zone is not subject to facial challenge under Article I, section 8, as an ordinance directed at the content of speech or as a content-neutral ordinance that expressly prohibits speech. *Media Art Company v. City of Gates*, 35 Or LUBA 123 (1998).

31.2.4 Permits – Types – Other. A zoning ordinance that is not directed at the content of speech and does not expressly prohibit speech may be challenged under Article I, section 8, only on an as-applied basis. To prevail, an as-applied challenge to a decision denying a proposed billboard because it is not an accessory use to uses allowed in an industrial and commercial zone must demonstrate that the decision burdens the applicant's rights of free expression without a rational basis for doing so. *Media Art Company v. City of Gates*, 35 Or LUBA 123 (1998).

31.2.4 Permits – Types – Other. A local government may constitutionally distinguish between signs related to on-premises uses, and signs related only to off-premises uses or services, and deny a proposed billboard because it is unrelated to the primary use of the property, where the city's evaluation of the relationship between the sign and the premise does not entail a content-based distinction, and the on-premises/off-premises distinction is a rational means to preserve the zone for allowed uses. *Media Art Company v. City of Gates*, 35 Or LUBA 123 (1998).

31.2.4 Permits – Types – Other. A local government does not impermissibly favor commercial speech over noncommercial speech because it allows signs related to on-premises uses in an industrial and commercial zone and prohibits all others. That signs related to on-premises commercial uses are allowed while unrelated commercial and noncommercial signs are prohibited is an incidental consequence of the permissible distinction drawn between signs related to on- and off-premises uses. *Media Art Company v. City of Gates*, 35 Or LUBA 123 (1998).

31.2.4 Permits – Types – Other. A city's determination that a proposed billboard is not an accessory use "incidental, appropriate and subordinate" to the primary use on the property is subject to an inquiry so factually and legally circumscribed that it does not render constitutionally

protected rights of free expression contingent upon the unbridled discretion of a government official. *Media Art Company v. City of Gates*, 35 Or LUBA 123 (1998).

31.2.4 Permits – Types – Other. Under ORS 227.215, the definition of "development" is sufficiently broad to encompass the removal of a tree for landscaping purposes, and a local government may regulate tree removal through the issuance of development permits. *Lindstedt v. City of Cannon Beach*, 33 Or LUBA 516 (1997).

31.2.4 Permits – Types – Other. A fill permit issued by the city building division is excluded from the definition of a land use decision under ORS 197.015(10)(b)(A) where it involves the application of clear and objective standards that do not require interpretation or the exercise of policy or legal judgment. *Fechtig v. City of Albany*, 31 Or LUBA 441 (1996).

31.2.4 Permits – Types – Other. LUBA's review is limited to what is approved by the challenged decision. LUBA will not review the legal sufficiency of a development permit that the challenged decision does not purport to approve. *Hixson v. Josephine County*, 26 Or LUBA 159 (1993).