

25.8 Local Government Procedures – Discretionary/ Ministerial Distinction. Where issuing a floodplain review permit requires calculating whether the cumulative effect of a proposed development in a designated floodplain increases the base flood elevation more than one foot, and that calculation can require either interpretation or the exercise of legal judgment, a decision to issue the permit is a land use decision. *Johnson v. Jackson County*, 59 Or LUBA 94 (2009).

25.8 Local Government Procedures – Discretionary/ Ministerial Distinction. In determining that an increase from a 32 to 60 bed homeless shelter would not have significant additional impacts on surrounding properties, that there is a justifiable change in circumstances, and that a previous condition of approval is satisfied – the city exercised significant discretion and was required under its code to provide notice and the opportunity for a hearing. *Allan Donald Bruckner Trust v. City of Bend*, 56 Or LUBA 699 (2008).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. In applying a zoning code process that permits ministerial correction of zoning maps to conform to the map or legal description that was adopted by or referenced in the enacting ordinance, the first step is to locate the relevant map or legal description, and the second step is to determine whether a nondiscretionary correction is possible based on that map or legal description. *6710 LLC v. City of Portland*, 40 Or LUBA 389 (2001).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. A Land Use Compatibility Statement requirement that a proposal to apply process water from a fruit processing operation to EFU-zoned land must “comply with all applicable local land use requirements” requires at a minimum that the county determine whether the proposal is a farm use and whether it is a utility facility. These determinations require the exercise of sufficient discretion that the county’s decision is both a “land use decision” and a “permit,” as those terms are defined by statute. *Farrell v. Jackson County*, 39 Or LUBA 149 (2000).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. A decision that disposal of sewage effluent by applying it to farm land constitutes a “utility facility necessary for public service” within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. A decision that disposal of sewage effluent by applying it to farm land constitutes a “farm use” within the meaning of ORS 215.203 requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of “land use decision” provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. A decision authorizing construction of facilities necessary to apply sewage effluent to farm land constitutes the approval of a “proposed development of land” and thus is a “permit” within the meaning of ORS 215.215.402(4) if the decision involves the exercise of discretion. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. A decision that a proposal to transport treated effluent to an EFU-zoned parcel and apply that effluent to poplar trees constitutes a “farm use” within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. A decision authorizing construction of a lagoon on EFU-zoned land to store treated effluent constitutes the approval of a “proposed development of land” and thus constitutes a “permit” within the meaning of ORS 215.402(4) if the decision involves the exercise of discretion. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. The calculation of the amount of a tree preservation performance bond is ministerial, and does not require further city council review. *Squires v. City of Portland*, 31 Or LUBA 335 (1996).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. Decisions concerning development of property applying the elements of equitable estoppel require the exercise of factual and legal judgment and, therefore, are permits. Where a local government fails to provide a local public hearing or opportunity for appeal of such a permit decision, the deadline for filing a notice of intent to appeal the decision to LUBA is governed by ORS 197.830(3). *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. Where determining whether an existing quarry qualifies as a nonconforming use under applicable city code provisions requires a city to determine whether the existing quarry lawfully existed at the time the existing zoning was last amended and whether the use has been discontinued for a year, the nonconforming use determination involves the exercise of significant legal and factual judgment and is a "permit" as that term is used in ORS 227.160(2). *Hood River Sand v. City of Mosier*, 24 Or LUBA 381 (1993).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. Where an amended code provides discretionary criteria for approval of minor land divisions, it is error for the code to fail to require or provide for notice and hearing before the local government makes a final decision concerning a proposed minor land division. *Nicolai v. City of Portland*, 19 Or LUBA 142 (1990).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. Code provisions requiring that existing streets will not be "partially or fully blocked" and "[a]ccess to adjacent property from streets * * * will not be partially or fully eliminated," do not require the exercise of interpretation or judgment. *Nicolai v. City of Portland*, 19 Or LUBA 142 (1990).

25.8 Local Government Procedures – Discretionary/Ministerial Distinction. A code provision requiring that "[a]ll requirements of the City Engineer must be met" is discretionary where there are no standards to guide the planning director in choosing between (1) denying the application because the engineer's requirements are not met, or (2) determining it is feasible to satisfy the city engineer's requirements and imposing conditions requiring the engineer's criteria be met. *Nicolai v. City of Portland*, 19 Or LUBA 142 (1990).