1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will conclude that a decision does not include an implicit interpretation that resolves an apparent tension between a comprehensive plan policy and a local code provision where nothing cited to LUBA in the findings indicates that the local government recognized, much less attempted to resolve, the tension. *Oregon Shores Conservation Coalition v. Coos County*, 81 Or LUBA 839 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA reviews interpretations of conditions of approval to determine whether they are correct. *Matthews v. Lane County*, 81 Or LUBA 757 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a condition of approval for a nonfarm dwelling provides that "[t]he proposed dwelling site shall be located as represented by the applicant's written statements and approved site plan" and that "[a]ny deviation from this representation shall require an application for a modification of conditions with the applicable fees subject to the Planning Director's discretion," a hearings official misinterprets that condition by concluding that it provides the director discretion regarding whether a modification application will be required; instead, that condition provides the director discretion to review and issue decisions on modification applications. *Matthews v. Lane County*, 81 Or LUBA 757 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Because maximum lot standards regulate how an accessory dwelling can be sited on a lot (e.g., interior versus attached or detached), as with setbacks, and not whether one can be sited at all, as with minimum lot size standards and density limitations, such regulations relate to "siting" for purposes of ORS 197.312(5)(a). *Home Builders Assoc. v. City of Eugene*, 81 Or LUBA 764 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a petitioner challenges a local government's justifications for a 50 percent maximum lot coverage standard, but where there is no evidence in the record or argument from the petitioner that the standard is not "within the bounds of reason," or is "extreme," "excessive," or not "moderate," the petitioner has not established that the standard is not "reasonable" for purposes of ORS 197.312(5)(a). *Home Builders Assoc. v. City of Eugene*, 81 Or LUBA 764 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a petitioner argues that local code provisions regulating the size of accessory dwellings differently in different areas of the city based on lot size are not reasonable because (1) they could make conversion of existing single-family dwellings difficult and operate to discourage conversions, (2) lot size is not related to the size of a primary dwelling, and (3) the provisions allow potentially larger accessory dwellings on smaller lots in some zones and limit the size of accessory dwellings on larger lots in other zones, but where the petitioner has not established that the provisions "conflict[] with reason" or are "absurd," "ridiculous," or "extreme," the petitioner has not established that the provisions are not "reasonable" for purposes of ORS 197.312(5)(a). *Home Builders Assoc. v. City of Eugene*, 81 Or LUBA 764 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. That a sloped setback and building height requirement for attached accessory dwellings may make it more expensive to convert an existing floor area into an attached accessory dwelling does not establish that such a

consequence makes the requirement not "reasonable" for purposes of ORS 197.312(5)(a). *Home Builders Assoc. v. City of Eugene*, 81 Or LUBA 764 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government adopts a statutory definition into its land use regulations, the local definition cannot, on its face, violate the statute from which it is taken or any other statute. *Home Builders Assoc. v. City of Eugene*, 81 Or LUBA 764 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision requires that site design review be based upon consideration of the "[c]haracteristics of adjoining and surrounding uses," the local government does not err by characterizing adjoining and surrounding uses simply as farm uses, even where the adjoining and surrounding lands contain dwellings, where the lands are zoned for farm and forest uses, where the dwellings are allowed in conjunction with farm and forest uses, and where the purpose of the zones and the comprehensive plan is to protect and conserve farm and forest lands for farm and forest uses. *Anderson v. Yamhill County*, 81 Or LUBA 618 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision allows "public utility facilities, including substations and transmission lines," in a particular zone, the governing body does not err by concluding that a utility facility is "public" so long as it is necessary for the public health, safety, and welfare, even if it is not publicly owned; that a utility facility benefits the public health, safety, and welfare by increasing the overall capacity and redundancy within the larger utility system; and that a utility facility is "public" even if it benefits the public generally and not just residents of the local community. *Oregon Coast Alliance v. Tillamook County*, 81 Or LUBA 633 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provides that a use not listed in a particular zone may be permitted in that zone if it is "of the same general character, or has similar impacts on nearby properties, as do other uses permitted in the zone," the governing body does not err by concluding that a particular use satisfies that criterion even if it has lesser negative impacts than permitted uses. *Oregon Coast Alliance v. Tillamook County*, 81 Or LUBA 633 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government need not interpret the term "protect" the same way in the context of a statewide planning goal that does not protect a specific, unique natural resource or specific recreation area that it does in the context of a goal that does protect those things, even where the definitions of "protect" in the latter goal and in the local government's comprehensive plan are identical. *Crowley v. City of Hood River*, 81 Or LUBA 490 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local code provides that certain applications (1) must be "submitted on a form provided by the [Planning] Director," (2) "must be reviewed" pursuant to Type II procedures, (3) "may be reviewed" pursuant to Type I procedures in certain circumstances, and (3) "shall not be considered accepted solely because of having been received," the planning director has discretion to reject an application filed on an incorrect form. *Mattson v. Lane County*, 81 Or LUBA 526 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a comprehensive plan provision allows "minor navigational improvements" in a particular zone, which it defines as "alterations necessary to provide water access to existing or permitted uses in conservation management units," an interpretation of that provision as not requiring that the use for which the alteration is needed and the alteration itself be located in the same zone is consistent with the provision's express language; however, an interpretation of that provision as allowing alterations that are needed for a use that is not located in a "conservation management unit" is inconsistent the provision's express language. *Oregon Shores Conservation Coalition v. City of North Bend*, 81 Or LUBA 534 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a comprehensive plan management objective allows "a limited boat dock for transient recreation craft tie-up" in a particular zone, and the uses and activities matrix for the zone allows "docks" without limitation, but a different comprehensive plan provision states that uses and activities matrices are "subordinate" to management objectives and that allowed uses and activities must be "consistent" with the management objectives, a local government errs by allowing nonlimited boat docks in the zone. *Oregon Shores Conservation Coalition v. City of North Bend*, 81 Or LUBA 534 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision requires that a "declaration of anticipated noise levels" be attached to certain land use approvals and that applicants incorporate noise abatement strategies where noise levels are anticipated to exceed a certain threshold, the word "declaration" anticipates more than a statement from the applicant's attorney, without supporting documents or studies, and a reasonable person would not rely on such statements alone to conclude that the noise threshold is not exceeded. *Oregon Shores Conservation Coalition v. City of North Bend*, 81 Or LUBA 534 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. In considering an application for a relative farm help dwelling, a local government is not limited to considering the commercial farming operation occurring on the property on the date the application is filed, and the local government does not err by considering whether a new crop planted after the application is filed, either alone or in combination with the existing operation, is an "existing commercial farming operation" within the meaning of OAR 660-033-0130(9)(a). *Wachal v. Linn County*, 81 Or LUBA 561 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.750 and OAR 660-006-0005(5) allow a county to approve a forest template dwelling if, after applying a 160-acre template centered on the subject property, at least seven other "lots or parcels that existed on January 1, 1993, are" within the 160-acre area. A hearings officer's interpretation of a local code provision implementing the statute and the rule to conclude that an applicant failed to meet the seven-lot requirement because two parcels that existed on January 1, 1993, were later reconfigured pursuant to a major partition is inconsistent with the statute and the rule because the administrative rule history of the rule indicates that LCDC did not intend to prohibit an applicant from relying on a post-January 1, 1993 reconfiguration of a parcel so long as "the effect of" the later reconfiguration was not "to qualify a lot, parcel or tract for the siting of a dwelling." *Tugaw v. Jackson County*, 81 Or LUBA 458 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where comprehensive plan provisions provide, using mandatory language, that certain resource plan and zoning designations shall be used to conserve or protect fish and wildlife habitat from conflicting uses and that land use proposals that have undesirable impacts on those resources shall be reviewed during the plan and zone amendment processes, a local governing body errs in interpreting those provisions to conclude that it may apply nonresource plan and zoning designations to property mapped as fish and wildlife habitat and that any impacts may be evaluated and, if necessary, mitigated during subsequent review of development proposals. *1000 Friends of Oregon v. Linn County*, 81 Or LUBA 338 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a county code provision provides that a nonconforming use may not be resumed if there is a "discontinuance" for a period greater than one year, the county board of commissioners does not err in interpreting the undefined term "discontinuance" by resorting to the dictionary definition and in applying that interpretation to conclude that a property owner who is actively pursuing permits to complete repairs and upgrades that are required for health and safety reasons, and who is actively responding to appeals of those permits, has not discontinued a nonconforming use. Such an interpretation and application of the term "discontinuance" in the county code provision is not contrary to the term "interruption" in ORS 215.130(7)(a). *Campbell v. Columbia County*, 81 Or LUBA 385 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision requires that uses be conducted "wholly within an enclosed structure"; where the local code defines "structure" as both "[a]nything which is constructed, erected or built and located on or under the ground, or attached to something fixed to the ground," and "[a] walled and roofed building including a gas or liquid storage tank that is principally above ground"; where the first definition was in effect when the enclosed structure requirement was first enacted; and where the second definition was enacted as part of an ordinance that related to compliance with FEMA's requirements to participate in the National Flood Insurance Program, LUBA will affirm a local governing body's interpretation of the enclosed structure requirement, relying on the first definition of "structure," to allow a use that is surrounded by building walls, retaining walls, and fences. *Beaverton Business Owners, LLC v. City of Beaverton*, 81 Or LUBA 224 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local design guideline provides that "[p]rimary building entrances should be oriented toward and located in close

proximity to public streets and public street intersections" and that "[p]roperty size, shape and topographical conditions should also be considered," LUBA will affirm a local governing body's interpretation of that guideline to allow the primary entrance to a proposed development to be located on the opposite side of the property and oriented away from public streets where the primary entrance would nevertheless be "in close proximity to" those public streets and connected to those public streets with multiple pedestrian connections, and where the triangular shape of the property and a partially adjacent high-speed on-ramp to a highway support the applicant's choice to cluster the proposed development toward the public streets and provide a primary entrance on the opposite side of the property. *Beaverton Business Owners, LLC v. City of Beaverton*, 81 Or LUBA 224 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision provides that a refinement plan for property within a master plan area must be consistent with the master plan; where the master plan contains an executive summary, a listing of principles, a discussion section after each principle heading, other sections discussing site features and infrastructure strategy, a variety of graphics, and several other exhibits and attachments; where another local code provision provides that the intent of the master plan is to identify the "goals and policies" for development within the master plan area, and where other local code provisions suggest that "goals" and "policies" are different things, a governing body errs in concluding that merely furthering the principles is sufficient to establish consistency with the master plan and in failing to address provisions of the master plan dictating the strategies that development is required to use in order to actualize the principles—that is, in concluding that a refinement plan need only be consistent with the principles as summarized by their headings. *Mumper v. City of Salem*, 81 Or LUBA 152 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision authorizes the adoption of refinement plans for areas not less than 40 acres in size, where another local code provision authorizes an adjustment of a development standard if the purpose underlying the standard is "equally or better met" by the proposed development, where the 40-acre standard is intended to avoid piecemeal development, where an applicant proposes a 14-acre refinement plan for an area adjacent to an existing refinement plan area, and where the proposed and existing refinement plan areas will be under common ownership and have physically connected elements, a local government does not err in concluding that the 14-acre refinement plan "equally or better"

meets the 40-acre standard and, therefore, may be granted an adjustment. *Mumper v. City of Salem*, 81 Or LUBA 152 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.312(5)(a) does not provide an outright, unqualified entitlement to develop an accessory dwelling unit (ADU) on every property with a single-family dwelling; instead, that statute provides local governments some regulatory discretion in regulating ADUs that could have the effect of prohibiting an ADU on a particular property, so long as the regulation is reasonable and related to "siting and design." *Kamps-Hughes v. City of Eugene*, 81 Or LUBA 193 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. For purposes of ORS 197.312(5)(a), which requires cities to allow accessory dwelling units (ADUs) "subject to reasonable local regulations relating to siting and design," the word "siting" describes a regulation that allows the city to specify the location of an ADU on a site, and it does not allow the city to regulate where in each of the city's residential zones ADUs are allowed based on factors such as traffic, livability, and existing density. *Kamps-Hughes v. City of Eugene*, 81 Or LUBA 193 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under ORS 197.312(5)(a), which requires cities to allow accessory dwelling units (ADUs) "subject to reasonable local regulations relating to siting and design," while regulations prohibiting ADUs on alley access lots, requiring a minimum lot size for ADUs, requiring minimum lot dimensions for ADUs, and limiting ADU occupancy do not relate to "siting" or "design," regulations limiting the percentage of total lot area that can be vehicle use areas, limiting the number of garages or covered parking areas, limiting the dimensions of and requiring minimum setbacks for garages, and limiting driveway widths do relate to "siting" and "design." *Kamps-Hughes v. City of Eugene*, 81 Or LUBA 193 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where comprehensive plan and local code provisions provide that the comprehensive plan may be amended only when "[t]here is a demonstrated public need for the change," and where another comprehensive plan provision states that the desired land use pattern in the urban growth boundary includes "[n]eighborhoods with a mix of uses, diversity of housing types, pedestrian scale, a defined center and shared public areas," the governing body does not err in concluding that that there is a "public need" to redesignate the subject property to High Density Residential (HDR) because the property is in a neighborhood of low- and medium-density housing and because introducing HDR zoning into the area will allow higher-density housing in a new location within the jurisdiction and potentially increase housing supply and diversity, even where the jurisdiction's acknowledged Buildable Lands Inventory and other, more recent data indicate that there is no deficit of HDR land in the jurisdiction. *Carson Property LUBA Appeal, Inc. v. City of Corvallis*, 81 Or LUBA 175 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a city code provision provides that "[t]he footprint of any other new structure or any horizontal addition requiring at least one footing in ocean bluff areas must be set back from the bluff" a certain distance; where the documents identified by the provision as the resources the city is to consult in order to identify the location of the bluff edge are documents reflecting historic conditions; where grading is not listed as exempt from the requirements of the chapter; where the code does not support the

conclusion that the city may, in evaluating the required setback, sever the construction of a structure from the associated grading proposed as site preparation; where the material that the code requires be included in a geological hazard report supports the interpretation that the bluff edge is to be determined based upon existing conditions; and where the code allows variances to be considered to reduce the building setback if the variance helps lessen the risk of erosion or other hazard, an interpretation of the provision as providing that permitted development, such as grading and excavation, can occur prior to establishing the location of the bluff edge is inconsistent with the provision's express language and context for purposes of ORS 197.829(1). *Kimbrell v. City of Lincoln City*, 81 Or LUBA 10 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. A lot or parcel is not ineligible for a lot of record dwelling under ORS 215.705(1)(a) because it was transferred from a pre-1985 owner to a qualifying relative or business entity under ORS 215.705(6) by deed when the pre-1985 owner was still alive, *i.e.*, an *inter vivos* transfer, rather than by devise or intestate succession after their death. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. A family trust that the record shows was formed for the purpose of managing and eventually disposing of a pre-1985 owner's assets, including real estate, to family members may qualify as a "business entity owned by any one or combination of these family members," within the meaning of ORS 215.705(6), and, therefore, an "owner" of a lot or parcel, within the meaning of ORS 215.705(1)(a), for purposes of establishing a lot of record dwelling. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. A lot or parcel is not ineligible for a lot of record dwelling under ORS 215.705(1)(a) because it was transferred from a pre-1985 owner first to a family trust and then to a qualifying relative under ORS 215.705(6) as part of an estate plan; nothing in ORS 215.705(1)(a) limits the number of transfers of an otherwise qualifying parcel to a single transfer. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. Two parcels are not "under the same ownership" and, therefore, not a "tract," within the meaning of ORS 215.010(2), where one is owned by a person individually and the other is owned by a trust, with the same person serving as trustee. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. A parcel "include[s] a dwelling," making other parcels in the same tract ineligible for a lot of record dwelling under ORS 215.705(1)(b), where a lot of record dwelling has been approved on that parcel, even if construction of it has not yet started. *Central Oregon Landwatch v. Deschutes County*, 81 Or LUBA 75 (2020).

1.1.1 Administrative Law – Interpretation of Law – Generally. To the extent that LUBA's holding in *Perry v. Yamhill County*, 26 Or LUBA 73, 80, *aff'd*, 125 Or App 588, 865 P2d 1344 (1993), that the reasoning in *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), extends to a local government's interpretation of a prior land use decision, was correct, it was superseded by ORS 197.829(1), which requires LUBA to affirm "a local government's interpretation of its comprehensive plan and land use regulations" but does not require LUBA to affirm a local government's interpretation of a prior land use decision, findings adopted in support thereof, or conditions of approval attached thereto, which LUBA reviews under ORS 197.835(9)(a)(D) to determine whether the local government "[i]mproperly construed the applicable law." *M & T Partners, Inc. v. City of Salem*, 80 Or LUBA 221 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although the holding in *Beaver State Sand and Gravel vs. Douglas County*, 187 Or App 241, 65 P3d 1123 (2003), determined that ORS 215.298(2) prohibits surface mining on EFU-zoned lands unless the property is included on a Goal 5 inventory of significant aggregate resources, nothing in OAR 660-023-0180 prohibits a local government from otherwise maintaining a "Non-Significant Mining Mineral and Aggregate Inventory," adding properties to that inventory, or allowing surface mining on properties included on that inventory pursuant to local code provisions regulating surface mining, and a local government is not required to apply any rules implementing Goal 5 to its decision to add property to that inventory. *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision requires that a minimum of 250 square feet of "outdoor area" be provided for each residential lot and specifically states that the outdoor area may include "decking" and a "covered patio," as long as that covered patio is not "fully enclosed," the local government does not err by concluding that a covered deck that is attached to the dwelling, but not enclosed, can satisfy the minimum outdoor area requirement. *Bohan v. City of Portland*, 80 Or LUBA 263 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision generally prohibits development and grading in "areas of land movement," LUBA will affirm a hearings officer's interpretation of that provision to prohibit development and grading in "an area where a land slide or some other earth movement has already occurred—not an area where such activity *could* occur." *Chang v. Clackamas County*, 80 Or LUBA 321 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government errs by finding that compliance with a local code provision prohibiting diversion of storm water into areas with steep slopes and "areas of land movement, slump or earth flow, and mud or debris flow" is satisfied by compliance with a separate local code provision requiring development to provide "[p]ositive drainage and adequate conveyance of surface water * * * from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point." *Chang v. Clackamas County*, 80 Or LUBA 321 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. The planning commission's conclusion that the subject properties are subject to "site review requirements" is not supported by anything in the text of the Old Code, Ordinance 20224, or the New Code. *Simons Investment Properties, LLC v. City of Eugene*, 80 Or LUBA 458 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. In the context of an application to construct a 94-unit apartment complex, where a local code provision defines "net density" to mean "the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of the residents in the development, such as common open space or recreation facilities," while a maintenance building and internal parking circulation areas are properly included in the net density calculation, a leasing office should be excluded from the acreage used to calculate net density. *Hulme v. City of Eugene*, 80 Or LUBA 488 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the Court of Appeals determines that LUBA's decision was "unlawful in substance" pursuant to ORS 197.850(9)(a) because LUBA affirmed the city's interpretation of Goal 8, Policy 1, and according to the court, the city's interpretation of Goal 8, Policy 1 is not affirmable under ORS 197.829(1) because the city's interpretation does not "plausibly account for the text and context of the policy," the appropriate disposition according to OAR 661-010-0071(2)(d) is for LUBA to remand the decision to the city for further proceedings, specifically for the city to adopt a sustainable interpretation of Goal 8, Policy 1, and apply that policy, as interpreted to the application before it. *Crowley v. City of Hood River*, 79 Or LUBA 77 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision requires a finding that a proposed use "will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel," the proper comparison is between the proposed use and the pre-existing use, not between the proposed use and typical uses of the same type. *York v. Clackamas County*, 79 Or LUBA 278 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the predominant use of a proposed facility controls whether it is permitted in a zone, a local government does not err in concluding that the allocation of two-thirds of the physical space in a building to office uses makes the office use the predominant use of the building, even where the primary purpose of the office uses is to facilitate other uses in the building which are not allowed in the underlying zone. *Sky Lakes Medical Center, Inc. v. City of Klamath Falls*, 79 Or LUBA 490 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. The fact that a proposed second dwelling would have a smaller footprint, less square footage, and fewer bedrooms than an existing dwelling on the same lot is by itself insufficient to establish that the second dwelling is "accessory to" the existing dwelling for purposes of ORS 197.312(5). *Kamps-Hughes v. City of Eugene*, 79 Or LUBA 500 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. The fact that a proposed second dwelling would be located on the same lot as an existing dwelling is sufficient to establish that the second dwelling is "used in connection with" the existing dwelling for purposes of ORS 197.312(5), regardless of whether either dwelling is occupied by the owner of the lot. *Kamps-Hughes v. City of Eugene*, 79 Or LUBA 500 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code amendment is not inconsistent with an administrative rule, so as to require reversal or remand of the amendment decision, merely because the amendment uses the phrase "ministerial decision" while the rule uses the phrase "administrative decision," where the code does not treat those phrases differently. In addition, a local code amendment is not inconsistent with an administrative rule authorizing counties to grant extensions of permits if they determine the applicant was unable to begin or continue development "for reasons for which the applicant was not responsible" merely because the amendment provides a list of examples of such reasons, especially where the rule provides no definition or guidance for that phrase. *McCaffree v. Coos County*, 79 Or LUBA 512 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. While a variance should not be used as a substitute for rezoning, a local government does not err in granting a variance without a showing that strict application of the zoning ordinance would cause "practical difficulties or unnecessary hardships because of exceptional or extraordinary circumstances or conditions affecting the applicant's property" in a zone which the local code specifically exempts from that standard. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the only variable between multiple Urban Growth Area-Urban Growth Management (UGA-UGM) zones is lot size, and where a county code provision provides that "[t]he density of one UGA-UGM zoning district is not interchangeable with the density of another UGA-UGM zoning district without prior review

and approval by the affected city and * * * County," an interpretation by the county that the provision applies to zone changes of the subject property or changes to the underlying density of the zone in which the subject property is located, but that it does not apply to lot size variances, is inconsistent with the express language of the provision. In such cases, where the local code does not define "density" and the dictionary defines "density" as the quantity or number per unit of area, LUBA will make its own determination that a lot size variance in a UGA-UGM zone may qualify as an "interchange[]" with the density of another UGA-UGM zone, thereby requiring city review and approval. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code provision provides that "[a]pproval of [a] variance is limited to the minimum necessary to permit otherwise normal development of the property for the proposed use," an interpretation by the local government that the provision means a variance may be approved if it permits development consistent with the surrounding land use pattern and the uses permitted in the underlying zone, and that it does not mean a variance may only be approved if it is necessary to permit development that is allowed in the zone, is not inconsistent with the language of the code or the purposes or policies underpinning the provision. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. The fact that a tentative plan for a destination resort proposes a different pace of development than the final master plan, such as by sub-phasing development, does not materially affect the findings of fact on which the final master plan approval was based so as to constitute a "substantial change" to the final master plan, thereby requiring a new application, where neither the final master plan nor applicable regulations require that all development authorized in the first phase of the final master plan occurs at the same time. *Gould v. Deschutes County*, 79 Or LUBA 561 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the final master plan for a destination resort includes a mitigation plan requiring the applicant to replace the water consumed by the resort with a quantity and quality of water that will maintain fish habitat in an impacted stream, the fact that the tentative plan for one phase of development modifies the timing, but not the overall amount, of the mitigation water required to be provided does not materially affect the findings of fact on which the final master plan approval was based so as to constitute a "substantial change" to the final master plan, thereby requiring a new application, where there is no evidence that such modification will impact the efficacy of mitigation and there is evidence that such modification will result in more gradual, spread out impacts. *Gould v. Deschutes County*, 79 Or LUBA 561 (2019).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. When the county is entitled to deference under ORS 197.829(1), the decision can be reversed only if the interpretation is inconsistent with the express language, purpose or policy underlying the relevant code language. Under a non-deferential standard of review petitioner must demonstrate that the commissioners' interpretation is reversible. *Oregon Coast Alliance v. Curry County*, 78 Or LUBA 81 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. A petitioner may not also operate an exotic animal rescue facility, which is undisputedly not a "farm use," on EFU land where the petitioner uses his or her EFU-zoned property for certain "farm uses," under ORS 215.203. The existing "farm use[s]" do not "legitimize" the concurrent unpermitted uses, nor do they shield the unpermitted uses from county code enforcement action. *A Walk on the Wild Side v. Washington County*, 78 Or LUBA 356 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. The statute of limitations in ORS 131.125(8)(c) is inapplicable to a county's separate land use enforcement proceeding procedures pursuant to a county code that does not contain any time limitation for enforcement actions for violations of the county's land use code, because the county has authority over land use code enforcement matters independent from any statutorily derived authority in ORS Title 14 pursuant to county charter, and because ORS 153.030(4) expressly provides that "[n]othing in this chapter affects the ability of any other political subdivision of this state to provide for the administrative enforcement of the charter, ordinances, rules and regulations of the political subdivision, including enforcement through imposition of monetary penalties." *A Walk on the Wild Side v. Washington County*, 78 Or LUBA 356 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer's interpretation is inadequate for review before LUBA where the hearings officer finds that that a proposed bed and breakfast inn designed for occupancy by an employee caretaker and up to eight non-resident guests qualifies as a "bed and breakfast inn," without explaining how a caretaker occupancy is consistent with the county code which defines a bed and breakfast inn as an "owner-occupied" "single-family dwelling unit." *Elenes v. Deschutes County*, 78 Or LUBA 483 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county hearings officer errs in denying a forest template dwelling application on the sole basis that petitioner had not provided a fire safety inspection, where the applicable ordinance provision entitled "Wildfire Safety Requirements" requires "[o]ther measures as recommended by the fire agency commenting on the application or the County Fire Safety Inspector," and no fire agency recommended any measures or a fire inspection in any submitted comments. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Even though an applicant provides evidence of ownership of 200 or more acres in western Oregon after the application is deemed complete, a hearings officer correctly concludes that an application for a forest template dwelling satisfies ORS 215.740(3), where nothing in the statute or local development ordinances requires an applicant for a large tract forest dwelling to prove ownership of the parcel at the time an application is submitted. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer correctly interprets ORS 215.740(3) in concluding that the minimum acreage requirement that applies to an application for a forest template dwelling is the minimum acreage for the applicant's tracts located in western Oregon where the forest template dwelling is proposed to be located, rather than the non-contiguous parcel located in an adjacent county designated as eastern Oregon. ORS 215.740 allows an owner seeking a dwelling on a tract that is located in western Oregon to rely on non-contiguous land in another adjacent county to meet the minimum acreage requirements; it does not require that the minimum acreage requirements for the non-contiguous county be the applicable standard. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Petitioner's argument that the county hearings officer's failure to adopt findings of compliance with a county code provision (Washington County Development Code (CDC 421-7.8)) is not a position presented "without probable cause" sufficient to entitle an award of attorney fees against a non-prevailing party, where LUBA agreed with petitioner that the hearings officer's failure to adopt any findings explicitly addressing CDC 421-7.8 would warrant remand, unless, as occurred here, other findings with respect to other standards (CDC 422) in the hearings officer's decision were sufficient to address the substantive standards set forth in CDC 421-7.8, and therefore the hearings officer's failure to adopt findings addressing CDC 421-7.8 was harmless error. *McAndrew v. Washington County*, 78 Or LUBA 1094 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. The undefined standard categories "site-related development standards" and "use-related development standards" are ambiguous; a front setback standard and a maximum height standard could fall into either category. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a general category called "use-related development standards" is followed by a nonexclusive list of examples, and minimum front setback and maximum height standards are not included on the list, that is some support for concluding that minimum front setback and maximum height standards are not use-related development standards. But where one of the specified examples of a general category called "use-related development standards" is "size of use standards," it is certainly possible that a maximum height standard qualifies as a "size of use standard" and thus could qualify as a "use-related development standard." *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a hearings officer's findings provide an inadequate explanation for why he concluded minimum front setback and maximum building height standards qualify as "site-related development standards," that prior city hearings officers and the city council have reached the same conclusion is some support for the hearings officer's conclusion. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although local legislative history is generally not subject to official notice by LUBA and cannot be considered on appeal if it is not included in the local record, where the legislative history is contemporary commentary that was adopted by the city council when it adopted the legislation, LUBA will consider the commentary. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a prior version of the zoning ordinance only allowed modifications for setback and height standards, and the zoning ordinance was amended to allow a general category of standards, that lends some support to the local government's position that the general category of standards includes setback and height standards. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although LUBA may take official notice of commentary that was adopted with an ordinance, where that ordinance does not enact or amend the ambiguous zoning ordinance language at issue, it is of no significance in resolving the ambiguity. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer's findings cannot be faulted for failing to address the impacts of a modification (variance) on petitioner's nearby residence, where the findings expressly address those impacts and the relationship between the proposed structure and petitioner's residence and point out that the proposed structure is downslope and offset from petitioner's residence. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer's failure to adopt findings that address potential impacts of a proposed building on one nearby dwelling in granting a maximum height modification (variance) is not a basis for remand, where the "on balance" nature of the modification (variance) approval standard does not necessarily require individual findings for every nearby residence, a public walkway between that dwelling and the proposed dwelling reduces any legitimate expectation of privacy, and the topography and scale of the proposed building is such that where the two structures adjoin each other they will be of similar height. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Oregon Laws 2008, chapter 12, legislatively overruled the holding in *Phillips v. Polk County*, 53 Or LUBA 194, *aff'd*, 213 Or App 498, 162 P3d 338 (2007), which provided that it was unlawful to adjust property boundaries in a way that results in parcels that fail to comply with applicable minimum parcel sizes. Oregon Laws 2008, chapter 12, authorizes property line adjustments of substandard size lots and parcels, even if the resulting lots or parcels continue to fail to comply with applicable minimum parcel sizes. Oregon Laws 2008, chapter 12, section 6 made that legislation retroactive to "property line adjustments approved before, on or after the effective date of this 2008 Act." Therefore, Oregon Laws 2008, chapter 12 applies to a property line adjustment that took place in 2007, because the property line adjustment was "approved * * * before, on or after" the effective date of the 2008 Act. *Landwatch Lane County v. Lane County*, 77 Or LUBA 486 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Petitioner fails to meet her burden to demonstrate that LUBA has subject matter jurisdiction over a city council's decision to remove 35 trees from a city park, where petitioner argues the decision constitutes "logging" because it was motivated at least in part to generate revenue, and "logging" is not authorized under the Public Open Space zone that applies to the park. Simply because a city decides to offset the costs of removing hazardous trees to avoid the cost of treating and maintaining other compromised trees that are not yet hazardous does not convert the tree removal proposal into a logging operation, or otherwise make the decision a "land use decision." *Carlson v. City of Brookings*, 77 Or LUBA 497 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. Petitioner has not demonstrated that a city's decision to remove 35 trees from a 33-acre city park will have a significant qualitative or quantitative impact on present or future land uses. The decision does not alter any of the land uses allowed in the park's zone or any of the present or future land uses in the park, and the trees themselves are not land "uses" in any legally cognizable sense. *Carlson v. City of Brookings*, 77 Or LUBA 497 (2018).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will reject an argument that a legislative text amendment prohibiting new or expanded fossil fuel terminals is inconsistent with the Metro Framework Plan and Metro Transportation Plan where the city's code requires only that code text amendments are consistent with Metro's Urban Growth Management Functional Plan. *Columbia Pacific v. City of Portland*, 76 Or LUBA 15 (2017).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer errs in interpreting a condition of approval for a multi-phase planned unit development (PUD), which requires that the applicant for final phase approval submit a traffic stud y to determine if additional improvements are necessary to comply with the Transportation Planning Rule, to effectively supersede a different condition of approval applicable to all phases of the PUD that limits maximum development on the site to produce no more than a specified number of vehicle trips, where the two conditions can instead be interpreted to give effect to both. *Willamette Oaks LLC v. City of Eugene*, 76 Or LUBA 187 (2017).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county reasonably interprets its road vacation ordinance to apply to vacation of public easements, notwithstanding that the ordinance does not expressly refer to the vacation of public easements, where the ordinance implements ORS 368.326, a statute that authorizes counties to establish vacation procedures for, among other things, public easements. *Neighbors for Smart Growth v. Washington County*, 76 Or LUBA 319 (2017).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a comprehensive plan policy calls on the city to "[m]aintain the existing residential housing stock in established older neighborhoods by maintaining existing Comprehensive Plan and zoning designations where appropriate," and the city commission adopts a number of reasons why it believes maintaining existing planning and zoning designations is "not appropriate," a petitioner must do more than set out reasons why he thinks maintaining the existing planning and zoning is appropriate without

directly challenging the city commission's reasoning. *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a comprehensive plan policy requires that a city "ensure that potential loss of affordable housing is replaced" when changing comprehensive plan and zoning map designations, city findings that city-wide efforts to encourage affordable housing will be sufficient to make up for the loss of five dwellings through construction of a medical center made possible under new comprehensive plan and zoning map designations are sufficient to demonstrate the policy will not be violated. *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. A comprehensive plan goal of "protecting and maintaining neighborhoods" is not necessarily violated by a development that will displace five existing houses. A city commission interpretation that the proposal complies with the goal, notwithstanding the loss of the five houses, so lo ng as the proposal will otherwise protect and maintain the nearby neighborhood, is not reversible under ORS 197.829(1). *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the zoning code does not define "hospital structures" but does separately list "Hospitals" and "Medical and dental clinics, outpatient; [and] infirmary services" as permitted uses, a city does not misconstrue the zoning code by concluding that a "medical office building "does not qualify as a "hospital" and therefore need not have a backup source of electricity, which hospitals are required to have under the zoning code. *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 475B.340(2) and ORS 475.500(2) allow local governments to adopt "reasonable regulations" on marijuana production, processing, and sales. A county zoning ordinance that prohibits marijuana production in a rural residential zone while al lowing marijuana production in an exclusive farm use zone and on lands zoned farm and forest, which together include more than one million acres in the county, is a "reasonable regulation" within the meaning of the statutes. *Diesel v. Jackson County*, 74 Or LUBA 286 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a hearings officer's interpretation of a code provision that prohibits the filing of an application within two years that is "substantially similar" to an application that the county denied as requiring a high degree of similarity. Under the rules of interpretation, LUBA will affirm the hearings officer's conclusion that an application to develop a 62-lot subdivision on land zoned R 10 is not substantially similar to a previously denied application to develop a 72-lot subdivision on land zoned R 10, where the new subdivision proposes approximately 15 percent fewer lots, an increase in average lot size of approximately 20 percent, a decrease of approximately 100 daily trips, an increase in on-street parking, and wider streets. *Reinert v. Clackamas County*, 74 Or LUBA 427 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a hearings officer's interpretation of a code provision that requires the county to (1) incorporate tree

preservation into a development plan "wherever feasible," and (2) balance the preservation of natural features with the needs of development provided such balancing shall not require a reduction in the number of lots or dwelling units that would otherwise be permitted, to not require additional trees beyond the 90 of 423 that were proposed to be preserved where preservation of the additional trees would require a reduction in the number of lots or dwelling units that would otherwise be permitted. *Reinert v. Clackamas County*, 74 Or LUBA 427 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where an assignment of error challenges an interpretation that the decision on appeal does not adopt, the assignment of error does not establish a basis for reversal or remand. *Fernandez v. City of Portland*, 73 Or LUBA 107 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. In some circumstances a local government may have to provide some interpretation or findings explaining its understanding of a subjective standard such as a requirement to adopt buffers that "ensure compatibility" between urban and rural agricultural uses. However, in the context of a legislative proceeding to adopt regulations for such buffers there is no inherent obligation to adopt an interpretation of the standard, and the failure to adopt an interpretation is not in itself a basis for reversal or remand. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where one of seven factors that the comprehensive plan describes as "guid[ing] the determination of the most appropriate zone" guides the county to consider "[a]vailability of transit" and provides that "land within walking distance (approximately one-quarter mile) of a transit stop should be zoned for smaller lots," a hearings officer errs in concluding that land within approximately one-quarter mile of a transit stop is not within "walking distance" because sidewalks are not present. *Lennar Northwest, Inc. v. Clackamas County*, 73 Or LUBA 240 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the comprehensive plan sets out seven factors that "guide the determination of the most appropriate zone," a hearings officer errs in weighing some of the factors as less important than other factors without any support for that weighting in the express language of the factors or other parts of the comprehensive plan. *Lennar Northwest, Inc. v. Clackamas County*, 73 Or LUBA 240 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where one of seven factors that the comprehensive plan describes as "guid[ing] the determination of the most appropriate zone" guides the county to consider "proximity to jobs, shopping, and cultural activities" and guides that areas in proximity to jobs, shopping and cultural activities should be considered for smaller lots, a hearings officer errs in concluding that land that is proximate to jobs and shopping should not be zoned for smaller lots based on the hearings officer's negative assumptions about the quality of the jobs and shopping. *Lennar Northwest, Inc. v. Clackamas County*, 73 Or LUBA 240 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where one of seven factors that the comprehensive plan describes as "guid[ing] the determination of the most appropriate zone" guides that areas that have historically developed on large lots should "remain zoned consistent with the existing development pattern, "and the hearings officer interprets the "existing

development pattern" to be synonymous with the existing zoning, remand is required in order for the hearings officer to explain why a change from 10,000-square-foot lots to 8,500-square-foot lots in an area with some 8,500-square-foot lots is not "consistent with the existing development pattern." *Lennar Northwest, Inc. v. Clackamas County*, 73 Or LUBA 240 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the comprehensive plan sets out seven factors that "guide the determination of the most appropriate zone," and the factors are not competing policies and do not work at cross purposes, a hearings officer errs in weighting some of the factors as less important than other factors without any support for that weighting in the express language of the factors or other parts of the comprehensive plan. *Lennar Northwest, Inc. v. Clackamas County*, 73 Or LUBA 240 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer correctly interprets the provisions of the comprehensive plan's Housing chapter as not applying to an application for a zone change because a residential zone change proposes only a change in the zoning and possible density of housing but does not propose a particular type of housing. *Lennar Northwest, Inc. v. Clackamas County*, 73 Or LUBA 240 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer correctly interprets the provisions of the comprehensive plan's Public Facilities and Services chapter as not applying to an application for a zone change, where the chapter's policies are directed at development, and the adopted land use regulations implement the policies and apply at the time of development. *Lennar Northwest, Inc. v. Clackamas County*, 73 Or LUBA 240 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county finding that wind turbines are a conditional use in a commercial zone is not reversible error, even though wind turbines are not listed as a conditional use in the zone, where the balance of the decision clearly demonstrates the county in fact utilized its authority to approve uses that are similar to listed permitted and conditional uses in the zone to approve the wind turbines. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where LUBA sustains three assignments of error, but denies a fourth assignment of error, rejecting petitioner's challenge to a county commissioners' interpretation that a permit expiration standard that requires a finding that the applicant is not at fault for failing to complete the use authorized by the permit is met because the county's multi-stage destination resort process is so complicated, and LUBA's decision is reversed on appeal, with the Court of Appeals concluding that making the complexity of the multi-stage resort process the *only* consideration in applying the standard is an implausible interpretation of the standard, LUBA will sustain the fourth assignment of error as well. *Gould v. Deschutes County*, 72 Or LUBA 258 (2015).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer is not required to interpret and apply a county code provision that is similar, but not identical, to a different county code provision that was at issue in a thirteen-year-old board of county commissioner's decision that applied to a different application and property in the same way that

the board of commissioners previously applied the different code provision. *Head v. Lane County*, 72 Or LUBA 411 (2015).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the word "property" is not defined in the local code, the county correctly considers context provided by the definitions of "property line adjustment" and "property line," both of which include reference to a "lot of record," in order to interpret the meaning of "property" to refer generally to whatever units of land (parcel, lot, or lot of record) that are subject to a property line adjustment. *LaBare v. Clackamas County*, 71 Or LUBA 25 (2015).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under ORS 197.829(2), LUBA is authorized to interpret county land use regulations in the first instance in cases where the local government has failed to do so. Where a party raises an argument that a building used to board horses is authorized as a permitted use under the zoning and development ordinance, and the hearings officer does not consider the argument and does not adopt findings in response to the party's argument, LUBA may interpret the zoning ordinance and determine whether the building used to board horses is a permitted or conditional use in the zone. *Stavrum v. Clackamas County*, 71 Or LUBA 290 (2015).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a city's code does not expressly provide that the city's decisions are "final" for purposes of appeal to LUBA on the date notice is mailed to the parties, but a city code provision directs the planning director to include a statement in the notice of decision that the decision is final and may be appealed to LUBA within 21 days of the date of mailing, LUBA will interpret the code provision as intended to make the city's decisions final on the date of mailing for purposes of OAR 661-010-0010(3), which authorizes local governments to determine the date of finality by local rule or ordinance. *Stevens v. City of Island City*, 71 Or LUBA 373 (2015).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer correctly concludes that an isolated wetland is not a "riparian corridor," where the code defines riparian corridor as "an area, adjacent to a water area," and the isolated wetland is not "adjacent to a water area." *Carver v. Washington County*, 70 Or LUBA 23 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the Court of Appeals interpreted similar operative language in a county's code to determine that "riparian zones" are areas adjacent to water areas designated in a community plan, a hearings officer correctly interprets the term "riparian corridor" in that code to apply only to riparian areas that are proximate to designated water areas. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code provision authorizing a private street if the street is "not needed to provide access to other properties in the area" is not violated by a required pedestrian/bicycle connection between the proposed private street and offsite transit facilities, because "other properties in the area" does not refer to transit facilities in a public right-of-way. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer's approval of an extension of a PUD construction schedule that has been modified several times since the original PUD approval is consistent with a code section governing extensions of PUDs, where nothing in the original PUD approval or a condition of approval requiring the parties to enter into a Performance Agreement detailing the construction schedule prohibits extending the construction schedule. *Goodpasture Partners LLC v. City of Eugene*, 70 Or LUBA 59 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. A later-enacted section of the city's development code governing PUD modifications that includes similar provisions to a prior superseded version of the development code is the "corresponding provision" of the superseded code for purposes of the new code provision applicable to PUD modifications. *Goodpasture Partners LLC v. City of Eugene*, 70 Or LUBA 59 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer correctly rejects an interpretation that connecting two dwellings by a causeway creates a single "dwelling," with two or more "dwelling units," based on a general code definition of "dwelling," where a narrower definition of dwelling that limits "dwelling" to a single dwelling unit applies in the zone. *Macfarlane v. Clackamas County*, 70 Or LUBA 126 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a planning commission's interpretation of a code net density calculation requirement to exclude "public and private streets and alleys, public parks, and other public facilities "as not requiring the exclusion of acreage that is encumbered by easements for sewer and water lines where the phrase "other public facilities" is not defined and the applicable code provision does not use the word "easement." *Oakleigh-McClure Neighbors v. City of Eugene*, 70 Or LUBA 132 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. A planning commission improperly construes a requirement in the local code to adequately screen a proposed PUD from adjacent properties when it concludes that existing open space provides adequate screening, where it does not require the PUD to be visually shielded or obscured from the adjacent property through any of the means specified in the definition, because it fails to give meaning to the word "screening." *Oakleigh-McClure Neighbors v. City of Eugene*, 70 Or LUBA 132 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a hearings officer's interpretation of provisions of the city's development code and the city's utility licensing code section that apply to wireless communications facilities to exempt a wireless communication facility tower (WCF Tower) that is proposed to be located in the public right-of-way, where all of the applicable provisions, read together, support a conclusion that the city intended to exempt WCF towers located in the public right-of-way from special use review under the city's development code. *Weston Kia v. City of Gresham*, 70 Or LUBA 483 (2014).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a decision maker identifies the dictionaries relied on to clarify the meaning of ambiguous terms, it is not error to fail to identify which edition of those dictionaries was used where the dictionary definitions are generally consistent with the definitions of those terms in the 2002 unabridged edition of Webster's Third New Int'l Dictionary. *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. It is not error to consult dictionary definitions of the component terms of a larger complete term, where the larger complete

term is not defined by local land use code that uses the larger complete term. *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where it can be established that a local government intended a technical or industry-based meaning for an ambiguous term, it is error to instead rely on general dictionary definitions. However, it is not error to rely on general dictionary definitions where the record does not establish a technical or industry-based meaning was intended. *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where there is nothing in the record to suggest the enacting city council understood the separate steps in metals recycling or the industry understanding of the scope of activities in scrap and recycling facilities, there is no reason to believe the enacting local government's understanding of the scope of "scrap and dismantling yard" was influenced by the industry's understanding of the meaning of that term. *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where there is no reason to believe the enacting governing body was aware of or considered statutes and rules governing dismantling of scrap metal processing yards when it enacted the local term "scrap and dismantling yard," the fact that those statutes and rules exclude metal shredders is not context for determining whether the local term "scrap and dismantling yard" includes metal shredders. *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the city zoning listing of permitted uses includes "scrap and dismantling yard," and the zoning ordinance provides that "'or' may be read as 'and' and 'and' may be read as 'or,' if the sense requires it," it is questionable whether the permitted use must both accept scrap and engage in dismantling. *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the record is such that a reasonable decision maker could have concluded that a metal shredder is a sufficiently unique step in metals recycling that it should be viewed as different in kind and therefore a different use from a "scrap and dismantling yard," but the record and dictionary definitions also would permit a reasonable decision maker to view a metal shredder as simply a different piece of equipment to allow more complete recycling, LUBA will conclude that the local decision maker did not "[i]mproperly construe the applicable law" in adopting the latter view. *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where some zoning ordinances take a "laundry list" approach and include an exhaustive list of allowed uses and other zoning ordinances list more generally allowed categories of uses, followed by a non-exclusive listing of examples, it may be more appropriate to narrowly construe uses listed in zoning ordinances taking the former approach and more broadly construe uses listed in zoning ordinances taking the latter approach. But where a zoning ordinance is not easily categorized into either approach, and includes elements of both, a local decision maker does not err by failing to adopt a narrow construction of

the term "scrap and dismantling yard." *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code definition of "lot" as an "area of land owned by or under the lawful control and in the lawful possession of one distinct ownership" does not have the legal effect of aggregating adjacent, separately owned areas of land. *Mackenzie v. Multnomah County*, 68 Or LUBA 327 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm as correct a hearings officer's interpretation that a local code provision that requires aggregation of contiguous parcels in common ownership for development of a "Lot of Record" in a particular zoning district is not self-effecting. Such a code provision does not have the effect of aggregating contiguous parcels in common ownership merely because the parcels were, for three years, included in the particular zoning district, where no development was proposed or completed during the three-year period when the property was included in the zoning district. *Mackenzie v. Multnomah County*, 68 Or LUBA 327 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm as correct a hearings officer's conclusion that a prior dwelling approval for one property did not aggregate adjacent contiguous parcels in common ownership, where nothing in the local code criteria that applied to the prior dwelling approval required aggregation in order to obtain a development permit, and the dwelling approval was not conditioned on aggregation of the parcels. *Mackenzie v. Multnomah County*, 68 Or LUBA 327 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where competing interpretations of a development code are equally plausible, and there is some contextual support for the interpretation selected by a hearings officer, LUBA will conclude that the hearings officer did not "[i]mproperly construe[] the applicable law," within the meaning of ORS 197.835(9)(a)(D). *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government errs in construing a previous decision that deferred finding compliance with an applicable approval criterion to final planned unit development stage to restrict the local government's obligation to determine whether the applicable criterion that was deferred is satisfied by only considering whether the information required by a condition of approval was submitted, where the previous decision makes clear that the local government completely deferred making a determination of compliance with the applicable criterion to the final PUD stage. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 33 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will not consider whether a county has authority to approve conditional zoning where the applicant modified its proposal making conditional zoning unnecessary before the board of commissioners could make a decision about whether the county had such authority. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a planning commission's conclusion that ponds and a slough area were included within the city's Willamette River Greenway boundary for their important natural values, and not because the area is a "channel" of the Willamette River, where the city's adopted greenway boundary map and a study the city relied on in setting the boundaries support the city's conclusion. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 351 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the county zoning that applied to recently annexed territory inside a city's urban growth boundary provided that dwellings were allowed only if the property "was designated for residential use by the city," and the city took the position in its brief that the property was not designated for residential use, LUBA will assume that the city is correct where (1) petitioners do not argue in their petition for review that property was designated for residential use and (2) petitioners fail to respond to the city's argument in its brief. *Knaupp v. City of Forest Grove*, 67 Or LUBA 398 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will not interpret a statute differently than the Court of Appeals interpreted the statute, based on legislative history that the Court of Appeals may not have considered, where LUBA cannot determine from the Court of Appeals' decision whether it declined to consider the legislative history under *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), because it found the statutory meaning was resolved by examining the text and context, or whether the Court of Appeals simply found the legislative history unpersuasive or not sufficient to overcome the text and context. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a city decision that an applicant's methodology for estimating trip generation from a proposed discount superstore is consistent with the guidelines set out in an applicable traffic generation manual, where nothing in the manual requires that another method be used where no similarly situated store is located in the city, or calls into question the extrapolation method that the traffic engineer used. *Neighbors for Dallas v. City of Dallas*, 66 Or LUBA 36 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a city council's interpretation of local code provisions governing when a traffic impact analysis (TIA) is required for a land use application that concludes that a TIA is not required where ODOT is the road authority with jurisdiction over the affected roads, and petitioners merely disagree with the city's interpretation but do not explain why the interpretation is not plausible. *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010). *Neighbors for Dallas v. City of Dallas*, 66 Or LUBA 36 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. A one-half-acre size requirement threshold for requiring PUD approval is not a mere application requirement that can be overlooked to require PUD approval for proposals of less than one-half acre. Even if the city intended to delete that threshold for PUD proposals near transit stations, where the threshold clearly applies it cannot be overlooked to give effect to an intent that is inconsistent with the text of the zoning ordinance. *Mintz v. City of Beaverton*, 66 Or LUBA 118 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. A petitioner fails to establish that a city erroneously interpreted a county "ten percent/10,000 square foot" limitation on commercial development in a mixed-use zone to apply to individual development proposals rather than the larger comprehensive plan areas when a large number of small developments might be proposed where there is textual support f or both the city's and petitioner's interpretation. *Mintz v. City of Beaverton*, 66 Or LUBA 118 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. Unless presented with some evidence to the contrary, a city decision maker could reasonably assume that proposed residential development will generate negligible air and noise pollution. *Rosenzweig v. City of McMinnville*, 66 Or LUBA 164 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the issue in an appeal of a decision authorizing expansions to a winery under the ORS 215.283(2)(a) authority for "commercial activities that are in conjunction with farm use" is whether that expansion exceeds the judicially created requirement that such winery activities must be incidental and secondary activities that are supportive of vineyards, the legislature's treatment of wineries in different subsequently enacted statutes that specifically authorize wineries in EFU zones is relevant, even though those subsequently enacted statutes are not part of the statutory context of ORS 215.283(2)(a). *Friends of Yamhill County v. Yamhill County*, 66 Or LUBA 212 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. In resolving ambiguities in the text of an ordinance that amends a local government's zoning ordinance, the title of the amending ordinance may be considered. *Cassidy v. City of Glendale*, 66 Or LUBA 314 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009), LUBA is free to consider any legislative history it considers useful and where the available legislative history is completely consistent with the city's interpretation and completely inconsistent with petitioner's interpretation, the legislative history is useful in resolving the different interpretations. *Cassidy v. City of Glendale*, 66 Or LUBA 314 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. Before it is appropriate to consider the non-regulatory ESEE Consequences Determination portion of Goal 5 planning for a site as context for interpreting the regulatory Resource Protection Program there must first be an ambiguity in the Resource Protection Program. *Mark Latham Excavation Inc. v. Deschutes County*, 65 Or LUBA 32 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. Text of an acknowledged Resource Protection Program may be unambiguous when read in isolation but may be ambiguous when read in context with the ESEE Consequences Determination. *Mark Latham Excavation Inc. v. Deschutes County*, 65 Or LUBA 32 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. Representations by a former owner that it only intended to mine 25 acres of an 80-acre site are insufficient legislative history to establish that the acknowledged Resource Protection Program for the site limits mining to 25 acres, where the programs for other sites expressly limited mining geographically but the program for the 80-acre site zoned all 80 acres for mining and imposed no express geographical limits. *Mark Latham Excavation Inc. v. Deschutes County*, 65 Or LUBA 32 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will remand a decision where the findings are inadequate to explain why a hearings officer interprets setback provisions that require a 100-foot setback to apply only to a proposed new kennel building and to not apply to outdoor dog play areas. *Butcher v. Washington County*, 65 Or LUBA 263 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Whether a city council initially tries to reverse a hearings official's interpretation of the city zoning code by amending the zoning code has no bearing on whether the city council could also effectively reverse the hearings official's interpretation by adopting an interpretation of its own. *Randazzo v. City of Eugene*, 65 Or LUBA 272 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the applicable approval criteria require an applicant to demonstrate that noise from its operations will not create a significant health or safety risk to nearby uses, and the evidence in the record shows that noise from its operations will satisfy the ongoing operating standard, LUBA will reject an argument that the applicable approval criteria require the applicant to demonstrate that total noise from all noise sources in the area will satisfy the applicable criteria. *Cottonwood Capital Property Mgmt. LLC v. City of Portland*, 65 Or LUBA 370 (2012).

1.1.1 Administrative Law – Interpretation of Law – Generally. In interpreting a zoning standard that requires a permit applicant to "[i]nsure that natural features of the landscape, such as land forms, natural drainageways, trees and wooded areas, are preserved as much as possible and protected during construction," the doctrine of the last antecedent would suggest that the obligation that natural features be "preserved as much as possible and protected" is not limited to the period of "construction." *Tonquin Holdings LLC v. Clackamas County*, 64 Or LUBA 68 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. The terms "commercial use" and "industrial use" are plainly general categories of uses that include more than one individual member. Where the zoning code defines "industrial use" to include the use of land for "processing primary, secondary, or recycled materials into a product, "that definition is sufficiently broad to include a proposed aggregate mine where the application states that "[e]xtracted material will be processed through a crusher to make the aggregate product desired." *Tonquin Holdings LLC v. Clackamas County*, 64 Or LUBA 68 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a zoning code expressly states that "a dimensional or development standard" set out in a latter part of the zoning ordinance applies in place of standards in an earlier part of the zoning ordinance when the earlier and latter standards "differ," a hearings officer erroneously interprets the zoning ordinance in concluding that the latter standards wholly displace the earlier standards without first establishing that they "differ." *Tonquin Holdings LLC v. Clackamas County*, 64 Or LUBA 68 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. A 1996 special siting statute for light rail projects specifically authorizes highway improvements and therefore may be used to site a light rail extension that includes substantial highway bridge and freeway improvements. *Weber Coastal Bells v. Metro*, 64 Or LUBA 221 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. It is not error to rely in part on compensation at fair market value when property must be condemned and relocation assistance for displaced businesses, as mitigation, when siting a regional light rail facility under a special siting statute. *Weber Coastal Bells v. Metro*, 64 Or LUBA 221 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a zoning ordinance requires that a notice of local appeal "include" "a clear and distinct identification of the specific grounds" for appeal and that compliance with that requirement is "jurisdictional," a local government may insist on strict compliance with the zoning ordinance requirements of a local notice of appeal. It is not inconsistent with the text of the zoning ordinance to conclude that a local appeal should be dismissed where the notice of intent to appeal includes no grounds for appeal and instead attempts to incorporate by reference legal issues stated in a different document that was created for a different reason, without attaching a copy of that document. *Lang v. City of Ashland*, 64 Or LUBA 250 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a city zoning ordinance delegates authority to a hearings official to "interpret" the zoning ordinance, the hearings official does not err by interpreting that delegation not to authorize the hearings official to declare city land use legislation ineffective to achieve the purpose it was clearly adopted to accomplish. Such a request is not a request for an "interpretation." *Goodpasture Partners LLC v. City of Eugene*, 64 Or LUBA 258 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a city zoning ordinance delegates authority to a hearings official to "interpret" the zoning ordinance, without expressly limiting such interpretations to ambiguous zoning text, that delegation nevertheless does not

authorize the hearings official to interpret unambiguous zoning text to say what it does not say. *Goodpasture Partners LLC v. City of Eugene*, 64 Or LUBA 258 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city council's interpretation that a comprehensive plan policy that requires adequate off-street parking is fully implemented by code off-street parking standards is plausible and LUBA will affirm the interpretation. *Rosenzweig v. City of McMinnville*, 64 Or LUBA 402 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. In conducting the alternatives analysis required under the local code for a proposal to develop access to a property over an unimproved right-of-way in an environmentally sensitive zone, a hearings officer correctly limits the alternatives analysis required under the local code to those alternatives that provide access to the location of the approved home site on the subject property, and correctly rejects alternatives that provide access to potential home sites in different locations on the property that have not received county approval. *Mackenzie v. City of Portland*, 63 Or LUBA 148 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under DEQ's noise regulations a wind energy generation facility may add 10 decibels to the background ambient noise level. In determining whether the facility violates that noise standard the operator may assume that the background ambient noise level is 26 decibels or actually measure the background ambient noise level and the operator's selection of the assumed 26 decibel background ambient noise level at one measuring location and time does not preclude the operator from selecting actual measured background ambient noise level at other measurement locations and times. *Mingo v. Morrow County*, 63 Or LUBA 357 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the Goal 4 rule incorporates a definition in the Oregon Structural Specialty Code, the version of the Code in effect when the Goal 4 rule was adopted controls, not the Code as subsequently amended, to avoid running afoul of constitutional prohibitions on delegating legislative authority. *Central Oregon Landwatch v. Jefferson County*, 62 Or LUBA 443 (2011).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government's interpretation of its ordinance is not "inconsistent" with the language of the ordinance, within the meaning of ORS 197.829(1)(a), if the interpretation is plausible, given the interpretive principles that ordinarily apply to the construction of ordinances under the rules of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. In determining whether a local government's interpretation of local land use law is inconsistent with the "express language" of the local land use law, LUBA and the appellate courts apply the statutory construction principles in ORS 174.010, which preclude interpretations that insert or delete words. *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government's interpretation of its own land use laws to allow the planning commission complete discretion to grant an unlimited number of one-year permit approval extensions will not be affirmed under ORS 197.829(1), where the local government's interpretation adds language that is not present in the local land use law, and the interpretation defeats the purpose of the local land use law, which is to limit the life of a permit decision that is not acted on. *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government misinterprets an ordinance that implements the OAR 660-023-0090(8) safe harbor provision that allows alterations to occupy up to 50 percent of the "width" of certain riparian corridors to mean alterations that take up less than 50 percent of the entire riparian area are permitted. The proper interpretation is that alterations may only occur within the 50 percent of the riparian corridor farthest from the river. *ODFW v. Josephine County*, 59 Or LUBA 174 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a code provision prohibits development approval for property that is not in full compliance with all code requirements and prior approvals, unless the approval results in the property coming into full compliance, a hearings officer does not err in interpreting the code to require the applicant to apply for all permits and approvals necessary to correct all code or permit violations as part of the development application, and to reject as insufficient the applicant's willingness to seek future permit approvals. *Reeder v. Multnomah County*, 59 Or LUBA 240 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. A street connectivity standard that requires that development must "include street connections to any streets that abut, are adjacent to, or terminate at the development site" is not correctly interpreted to allow a development proposal that would extend an abutting street a short distance into the development and then terminate the street without connecting it to an adjoining street. *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings official does not err by finding that a street connectivity standard that requires that development street systems not create "excessive travel lengths" is violated by a subdivision proposal that will result in eleven existing residents and the residents of three of the proposed lots having to drive one quarter of a mile out of direction to make certain trips. While the hearings official likely could have adopted a more permissive reading of the standard, it was not error to adopt the strict interpretation that the hearings official adopted. *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government does not misconstrue its ordinance when it interprets the term "contiguous" to mean lands adjacent to and within 2000 feet of the subject property. *Hermanson v. Lane County*, 56 Or LUBA 433 (2008).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government does not err in determining that a holder of an option to purchase property is not an "owner" for purposes of the local code definition of owner where the definition restricts owners to legal title holders or entities purchasing property under a written contract. *Vilks v. Jackson County*, 56 Or LUBA 451 (2008).

1.1.1 Administrative Law – Interpretation of Law – Generally. A code provision allowing a "property owner" to request a declaratory ruling related "to the use of the owner's property" does not permit a neighborhood association to request a declaratory ruling related to the use of property that the association does not own. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. Remand is necessary where entitlement to initiate a declaratory ruling request rests on whether the applicant is the "permit holder," use of the subject property was arguably authorized by a number of different permits, and the hearings officer rejected a neighborhood's association's claim to be a "permit holder" without determining which permits are at issue and which persons hold those permits. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. Interpretations of a local code provision offered for the first time in a response brief at LUBA are not interpretations made by the local government. *Munkhoff v. City of Cascade Locks*, 54 Or LUBA 660 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under *Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001), *adh'd to as modified*, 179 Or App 409, 40 P3d 532 (2002), if directly applicable legislation expressly requires that an analysis of existing lots or parcels must be limited to an analysis of *legally created* lots or parcels, then it follows that only lawfully created lots or parcels can be considered. However, even if the directly applicable legislation does not expressly require that lots or parcels have been legally created, that requirement may be found in related enactments and the legislative context in which the directly applicable legislation appears. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. When the local code requires a comparison to densities suggested in the comprehensive plan but the decision does not address any suggested densities, remand is necessary to determine if the comprehensive plan includes any suggested densities and, if so, either address them or explain why they need not be addressed. *Coquille Citizens for Resp. Growth v. City of Coquille*, 53 Or LUBA 186 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. When a code provision regarding riparian corridors could plausibly be required to be satisfied at the stage of the challenged decision or at a later stage, the issue was raised below, and the decision does not address the issue, the decision must be remanded for the local government to address the issue. *Coquille Citizens for Resp. Growth v. City of Coquille*, 53 Or LUBA 186 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. When a local government imposes a condition of approval based on a code provision regarding excessive demand created by

a proposed development, but the local government does not find that the proposed development will cause excessive demand, ignores the developer's proposed interpretation of excessive demand, and does not provide its own interpretation, the decision must be remanded. *PacWest II, Inc. v. City of Madras*, 53 Or LUBA 241 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county does not err by interpreting a development code approval criterion that requires that proposed uses must be shown to be compatible with surrounding uses to require consideration of only the existing surrounding uses and not potential future uses. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county does not err by interpreting a development code compatibility standard for the first time in its written decision, where the interpretation was not beyond the range of interpretations that could reasonably have been anticipated during the evidentiary phase of the county's proceedings, and petitioners do not demonstrate (1) that there is specific evidence that they could present that differs in substance from the evidence that they already submitted or (2) that the new evidence is directly responsive to the county's interpretation. *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998). *Clark v. Coos County*, 53 Or LUBA 325 (2007).

1.1.1 Administrative Law – Interpretation of Law – Generally. Even assuming a local government must evaluate the combined effect of multiple misstatements in the application that individually are immaterial, in determining whether to refer a revocation request to a hearing, where the alleged misstatements of fact have no relation to each other, there can be a "combined effect" to evaluate. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county's interpretation that a comprehensive plan policy, which implements Statewide Planning Goal 18 (Beaches and Dunes) and provides criteria for a determination whether development is appropriate in a beaches and dunes area, requires the county to address only adverse geologic or geotechnical impacts and not general development issues, is consistent with the text and context of the policy and the goal. *Borton v. Coos County*, 52 Or LUBA 46 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county's interpretation that a comprehensive plan policy, which implements Statewide Planning Goal 7 (Natural Disasters and Hazards), requires regulation of development in known areas potentially subject to natural disasters and is aimed at reducing risks to life and property that are *caused by natural hazards*, is not applicable in the context of a determination whether development is appropriate in a beaches and dunes area, pursuant to a comprehensive plan policy that implements Statewide Planning Goal 18 (Beaches and Dunes), which is aimed at reducing impacts that may be *caused by the proposed development*. *Borton v. Coos County*, 52 Or LUBA 46 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county grading permit standard stating that grading activities "shall also occur pursuant to" the standards of the local sanitary sewer agency does not incorporate those standards into the code or require that the county determine whether the grading permit complies with the agency's standards. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where no county approval was required to create parcels of more than 20 acres in a transitional timber zone if the parcel was to be used for forest use and the question is whether a parcel that was created 16 years ago was created for forest use, the fact that the parcel was used only for growing trees for 16 years is sufficient to show the parcel was created for forest use and it does not matter that no trees were harvested during that 16-year period. *Neal v. Clackamas County*, 52 Or LUBA 248 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. The broad statutory definition of "owner" under statutory lot-of-record provisions, which includes certain relatives of the fee title owner as the owner, does not apply in determining whether parcels are part of the same "tract" for purposes of approving a forest template dwelling. *Neal v. Clackamas County*, 52 Or LUBA 248 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. As a general rule there is no reason why a local government could not interpret an "orderly development" land division criterion to impose a more stringent standard than Oregon Department of Transportation's standard that the performance of failing intersections not be worsened by a proposal. However, where such an interpretation appears to be inconsistent with other city criteria and those apparent inconsistencies are not addressed in the decision maker's findings, LUBA will reject the interpretation as incorrect. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government's authority to interpret the scope and meaning of land use regulations adopted to implement statewide planning goals and administrative rules is constrained by ORS 197.829(1)(d), which requires LUBA to reverse an interpretation of a local regulation contrary to the goal, statute or rule it implements, notwithstanding the acknowledged status of that regulation. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 250 (1996), LUBA may apply ORS 197.829(1)(d) to review a local government's interpretation of an acknowledged code provision

that implements a statewide planning goal, statute or rule only if the code provision is ambiguous. If the code provision is subject to more than one reasonable interpretation, one of which is consistent with the goal, statute or rule implemented, the local government cannot choose an interpretation that is inconsistent with the goal, statute or rule implemented. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local code fire siting standards require that secondary fuel breaks (*i.e.*, a fuel break extending 130 feet in all directions around structures) "or their equivalent" apply to new residences, the county does not err in determining that secondary fuel breaks are not required in the riparian setback area, where the findings adopted in support of the riparian vegetation setback regulations acknowledge that riparian vegetation provides a sufficient natural barrier against the spread of fire. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

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

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

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

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

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the definition of "home occupation" in the local code includes a business activity that is conducted in a *dwelling* or *accessory building* normally associated with the primary uses allowed in the underlying zone, a local government need not determine whether the proposed *business* is normally associated with the permitted uses allowed in the zone. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local noise standard applicable to home occupations provides that the proposed home occupation "shall not create noise

that, when measured off the subject property, exceeds the greater of 60 dba or the ambient noise level," the hearings officer errs in interpreting that provision to allow noise spikes in excess of 60 dba. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local home occupation standard prohibits external evidence of a home occupation, an interpretation of that standard that allows a vehicle related to the home occupation to traverse the subject property to access an accessory structure in which the vehicle will be stored is reasonable. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where access from a county road to a home occupation is obtained via a driveway located on the pole portion of the subject property, the county does not err in determining that a local standard requiring that "the subject property have frontage on, and direct access from, a constructed public, county or state road" is satisfied, notwithstanding that the driveway crosses an existing easement providing access to neighboring properties. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. When the approval criterion calls for a tree survey that "provides the location of all trees" of certain specifications, the local government may not use a one-acre sample to extrapolate for a 70-acre site without a showing that it is representative of the entire site. *Butte Conservancy v. City of Gresham*, 51 Or LUBA 194 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a city is required by the Metro Code to prepare and release a report prior to annexation that describes how the annexation is consistent with agreements that the city is not a party to, but the Metro Code review criteria that govern review of the annexation on appeal do not require that the annexation be consistent with agreements the city is not a party to, Metro may not deny the annexation ordinance based on the city's failure to comply with the report requirement without explaining why that violation of the report requirements has the same status as a violation of one of the review criteria and provides a basis for denial. *City of Damascus v. Metro*, 51 Or LUBA 210 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a variance criterion requires the city to find that "public need" outweighs "adverse impacts" of developing wetlands and a party argues there is no market demand for the commercial development that the variance would allow, the city must address in its findings the role, if any, that market demand plays under the variance criterion and explain why the public need, as the city interprets those words, outweighs the identified potential adverse impacts. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. The legislature's use of different terms to describe the actions required to have standing to appeal to LUBA is some indication that the legislature intended to impose different standing requirements. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. To have standing to appeal a post-acknowledgment plan amendment under ORS 197.620(1) an appellant must have "participated" during the local proceedings, whereas to have standing to appeal under ORS 197.830(2) an appellant must have "appeared." The dictionary definitions of "participated" and "appeared" suggest more is required to participate than to appear, but those definitions do not identify what more is required. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

1.1.1 Administrative Law – Interpretation of Law – Generally. A comprehensive plan policy that merely describes the county's resource designations is not a mandatory tentative subdivision plan approval criterion, and the county was therefore not required to adopt findings addressing it. *Doob v. Josephine County*, 50 Or LUBA 209 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where "tract," "lot" and "parcel" are defined terms and a comprehensive plan policy uses the undefined term "ownership," a county decision that applies that policy as though "ownership" meant the same thing as "lot" or "parcel" but does not explain why must be remanded so that the county can explain its interpretation of the undefined term. *Just v. Lane County*, 50 Or LUBA 399 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. A general code standard requiring streets to be improved with curbs and other facilities "if required" is not properly interpreted to require curbs for a private street, where the specific standards governing private streets do not require curbs. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where an interpretation of an ambiguous code standard that bars variances in some circumstances is needed to explain why the local government believes that standard did not bar an approved variance, and the appealed decision does not include either an express or implied interpretation of the code standard, remand is required. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although LUBA is authorized to interpret ambiguous local land use legislation in the first instance if the local government fails to adopt a needed interpretation, where interpreting the land use legislation in a way that would be consistent with the local government's decision is problematic, LUBA will not attempt to interpret the legislation in the first instance. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. If a local government wishes to interpret and apply traditional variance standards differently than those standards have traditionally been interpreted and applied, it must articulate an interpretation of those standards that is sufficient for review. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government does not lose its inherent authority to interpret or reinterpret an ambiguous code provision in a quasi-judicial context when it decides to initiate a legislative code amendment process to resolve the code ambiguity. *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. While ORS 227.178(3), as interpreted in *Holland v. City of Cannon Beach*, 154 Or App 450, 926 P2d 701 (1998), prohibits a local government from changing its position with respect to the applicability of approval standards during the proceedings on a permit application, neither the statute nor *Holland* prohibit a local government from reinterpreting the meaning of indisputably applicable approval standards. *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. References in contextual laws that the Metropolitan Service District is to work cooperatively and use non-mandatory approaches in requiring action by cities and counties do not provide much assistance in determining whether a statute that specifically authorizes the Metropolitan Service District to require that city and county comprehensive plans and land use regulations be amended authorizes Metro to mandate such changes in a particular case. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. Express statutory authority for the Metropolitan Service District to take over local services if properly authorized to do so and to require changes in city and county land use regulations to address particular housing needs, patterns and practices of improper decision making does not necessarily mean that other statutes do not grant the Metropolitan Service District general authority to mandate changes in city and county land use regulations in other circumstances. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

1.1.1 Administrative Law – Interpretation of Law – Generally. A comprehensive plan citizen participation provision that requires appointment of a three-person citizens' advisory committee when the planning commission is considering a major change to the local government's land use regulations is not correctly interpreted to give the planning commission unlimited discretion in deciding what changes constitute major changes. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city code that requires planned development proposals to preserve trees "to the greatest degree possible" does not require that the applicant fundamentally change the nature of the application to maximize tree preservation. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city may not interpret a code exception for tree cutting permits to exempt a subdivision from a separate local code requirement for a tree protection plan, where the exemption for tree cutting permits has nothing to do with the separate tree protection plan requirement. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city does not err by interpreting a code requirement that 20 percent of the site for a planned development be landscaped

to allow an applicant to include areas of the site that will be included in common open space and left in their natural state. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city council's conclusion that a tennis facility is accessory to residential use of a property is inconsistent with the text and context of its code, where the code defines an accessory use as uses incidental and subordinate to the primary use, and a city interpretation relies on the seasonal and nonprofit characteristics of the tennis facility and ignores other characteristics that demonstrate that the tennis facility is of much greater scale and intensity than the residential uses located on the property. *McCormick v. City of Baker City*, 46 Or LUBA 50 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code requirement that a house could only be allowed in a floodplain if "no alternative exists on the subject property which would allow the structure to be placed outside of the flood plain," does not require that an applicant reconfigure the proposed house or reduce the size of its footprint to locate the house outside the floodplain. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will affirm a city decision that interprets a comprehensive plan community park policy to describe a type of park and not to impose approval criteria for particular park developments, where relevant plan policies describe four categories of parks within the city, but neither the plan nor the zoning code includes minimum standards for the development of parks. *Monogios and Co. v. City of Pendleton*, 46 Or LUBA 356 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the challenged decision does not explain why the area of large covered porches attached to approved dwellings was not included in calculating the maximum "buildable area," and relevant code definitions suggest that such accessory structures are part of "buildings," remand is necessary to interpret the code and determine whether such structures should be included in calculating the buildable area. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a county code defines "owner" to be the "legal owners(s) of record as shown on the tax rolls of the County," an interpretation that the fee simple owners are not owners because the value of the fee ownership is minimal in comparison to the value of the easement that crosses that property is not sustainable. *Baker v. Washington County*, 46 Or LUBA 591 (2004).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a standard requires that a developer design a subdivision to "minimize" its impact on significant natural areas, and a hearings officer interprets that standard not to limit the developer to the minimum number of lots allowed in the zone, that interpretation is reasonable, where the text and context of the standard show that the "minimization" envisioned by the standard is modification to site design, and not to the number of lots in the development. *Neketin v. Washington County*, 45 Or LUBA 495 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. Local code requirements that a recreational use "shall not be the primary enterprise" of the property and that the recreational use

must "be subordinate to the commercial agricultural operation in scope, scale and impact," need not be interpreted to require that the commercial agricultural use generate more income than the recreational use. A county's interpretation of those code requirements to necessitate comparison of the physical characteristics of the recreational use and the commercial farm use instead is not inconsistent with the language of the code. *Underhill v. Wasco County*, 45 Or LUBA 566 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer's interpretation of a local code to conclude that a "wholesale nursery" is properly viewed as an "agricultural use" is consistent with the text of the code's definition of "agricultural use," where the term is expressly defined to include "horticultural use." *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government interpretation that the subject property constitutes a "neighborhood" for the purpose of determining whether a proposed development is consistent with a plan policy that requires maintaining existing residential density levels within existing neighborhoods is not subject to deference under ORS 197.829(1) because it is inconsistent with the definition of "neighborhood" set out in the zoning ordinance and the dictionary definition of that term. *Roberts v. Clatsop County*, 44 Or LUBA 178 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government interpretation that defines "existing residential density levels" as the maximum density allowed in the most intensive residential zoning district within the neighborhood is inconsistent with the text and apparent purpose of a policy that requires the local government to maintain existing residential density levels in established neighborhoods, because it does not take into account the majority of the property in the neighborhood that is zoned and developed at substantially lower density levels. *Roberts v. Clatsop County*, 44 Or LUBA 178 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where LUBA and the Court of Appeals have already decided that local ordinance provisions require that an applicant for a lot line adjustment demonstrate that the proposed use of the property after the lot line adjustment is served by adequate public facilities and is compatible with comprehensive plan policies, a city may not interpret those same provisions in such a way as to relieve an applicant of that burden. *Robinson v. City of Silverton*, 44 Or LUBA 308 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city did not err in interpreting a local code criterion that requires that "walkways" connect to "areas of the site such as * * * adjacent streets" to require that petitioner deed an easement to the city for a sidewalk crossing in front of petitioner's building through the center of its property in order to connect with adjacent streets on each side, where the city's definition of "walkway" requires that walkways be "accessible to the public." *Hallmark Inns v. City of Lake Oswego*, 44 Or LUBA 605 (2003).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local governing body's interpretation of its ordinance to allow it to impose conditions of approval when a dwelling is approved through the county's conditional use process, to address the impacts that the dwelling

may have on big game habitat, is within the interpretive discretion afforded by ORS 197.829(1) and will be afforded deference by LUBA. *Botham v. Union County*, 43 Or LUBA 263 (2002).

1.1.1 Administrative Law – Interpretation of Law – Generally. The noise standard at OAR 340-034-0035(1)(b)(B) applies to a proposal to expand an existing aggregate mining site onto a neighboring property that has not been used for either industrial or commercial purposes within the 20-year period immediately preceding the application to mine the property. *Morse Bros., Inc. v. Linn County*, 42 Or LUBA 484 (2002).

1.1.1 Administrative Law – Interpretation of Law – Generally. The noise standard at OAR 340-034-0035(1)(b)(B) applies to a proposal to expand an existing aggregate mining site onto a neighboring property that has not been used for either industrial or commercial purposes within the 20-year period immediately preceding the application to mine the property. *Morse Bros., Inc. v. Linn County*, 42 Or LUBA 484 (2002).

1.1.1 Administrative Law – Interpretation of Law – Generally. A planning director's interpretation that the base point from which a building height is calculated is established by determining the elevation of property after fill has been placed on the property is correct where the context makes it clear that some manipulation of the elevation may be done so long as the fill has been placed pursuant to approved grading plans. *Tirumali v. City of Portland*, 41 Or LUBA 231 (2002).

1.1.1 Administrative Law – Interpretation of Law – Generally. A governing body's interpretation of a local provision is adequate for review where its findings articulate or demonstrate the governing body's understanding of the provision to a degree sufficient to resolve the issues raised in the petition for review. *Huff v. Clackamas County*, 40 Or LUBA 264 (2001).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a county ordinance requires that "major service activity areas" be "oriented away from existing dwellings," it is reasonable and correct to interpret the ordinance to be satisfied by modification and conditions that direct impacts of service activities away from existing dwellings. *Knudsen v. Washington County*, 39 Or LUBA 492 (2001).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the first clause of a local code provision requires that design review comply with a set of criteria used to rezone property and the second clause requires that design review also comply with those criteria addressed at the time the subject property was rezoned, a hearings officer's interpretation limiting design review to the subset of criteria addressed at the time the property was rezoned fails to give effect to the first clause of the code provision, and is therefore not reasonable and correct. *Blazer Construction, Inc. v. City of Eugene*, 36 Or LUBA 391 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government errs in declaring that an intergovernmental agreement no longer controls whereby the terms of that agreement it governs until specified recommendations are implemented, and the record shows that the recommendations have been only partially implemented. *City of Salem/Marion County v. City of Keizer*, 36 Or LUBA 262 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. An interpretation of a zoning ordinance that shifts the burden of demonstrating compliance with minimum lot size approval standards to opponents of the application is erroneous. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a code provision requires an applicant for expansion of a golf course on EFU-zoned land to demonstrate that alternative urban sites are not available and an applicant applies to expand an existing golf course, a hearings officer's interpretation of the provision as limiting the requisite alternative site analysis to locations where the existing golf course can expand is reasonable and correct. *DLCD v. Jackson County*, 36 Or LUBA 88 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city council's implicit interpretation that a planning director's letter is not an "action or ruling" that may be appealed to the planning commission is inadequate for review, when LUBA cannot determine the legal basis for the city council's determination. *Schultz v. City of Forest Grove*, 35 Or LUBA 712 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. The term "farm use" as defined in ORS 215.203(2)(a) is not a "delegative term," and a county commits no error by failing to adopt county legislation to clarify the meaning in advance of making a decision about whether a particular use qualifies as a "farm use." *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. In determining whether a particular use qualifies as an "other agricultural or horticultural use," as that phrase is used in ORS 215.203(2)(a), there is no requirement that a county hearings officer develop a list of salient characteristics of such uses. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. A proposal to site a drug and alcohol recovery facility within a single-family dwelling in a residential zone must be permitted when the relevant code provision permits outright those activities that are conducted in buildings "designed or used for the occupancy of one family" and the proposed recovery facility is to be located in such a structure. *Recovery House VI v. City of Eugene*, 35 Or LUBA 419 (1999).

1.1.1 Administrative Law – Interpretation of Law – Generally. A legislative enactment supersedes all of an administrative rule only if the enactment specifically and comprehensively contradicts all or nearly all of the critical components of an administrative rule. *Northwest Aggregates Co. v. City of Scappoose*, 35 Or LUBA 30 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 222.170(4) applies only to annexations conducted under ORS 222.170(1) and is not applicable to annexations conducted under ORS 222.125. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code requires that sewer facilities be "available" as a condition of approval for annexation, the local government's interpretation of the "available" criterion as being met where extension of sewer services is feasible within the current planning period is not clearly wrong. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA's analysis of a local government's interpretation of a local ordinance is not limited to the text and context of the provisions, but may also consider their purpose, and the effects thereon of a literal interpretation. *Recovery House VI v. City of Eugene*, 34 Or LUBA 486 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. A code requirement that each lot in a subdivision be approved with provisions for sewage disposal is reasonably interpreted as not applying to lots that are not to be developed. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. There is no basis for applying the doctrine of unique circumstances to local land use decisions. If local regulations make failure to timely file an appeal a jurisdictional defect, LUBA has no authority to develop an equitable remedy that overcomes such a defect. *Mountain Gate Homeowners v. Washington County*, 34 Or LUBA 169 (1998).

1.1.1 Administrative Law – Interpretation of Law – Generally. Amendments to ORS 197.830(6) that shorten the statutory deadline for filing a motion to intervene in a LUBA appeal impair the existing right to participate in an appeal. Thus, the statute applies prospectively in the absence of an expression of legislative intent to the contrary. *Gutoski v. Lane County*, 33 Or LUBA 866 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. Generally, where the legislature fails to express any intention concerning the retroactivity of a statute, the statute applies only prospectively if the statute will impair existing rights, create new obligations or impose additional duties with respect to past transactions. *Gutoski v. Lane County*, 33 Or LUBA 866 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although LUBA may interpret a local ordinance, it is not required to do so. *Opp v. City of Portland*, 33 Or LUBA 654 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where local code includes two different definitions of "campgrounds," a county decision approving a campground must address both definitions and determine whether one or both definitions apply and whether the proposed use complies with whatever definition applies. *Donnelly v. Curry County*, 33 Or LUBA 624 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. The text and context of ORS 215.750 establish that a governing body may impose standards in addition to those in ORS 215.750. *Evans v. Multnomah County*, 33 Or LUBA 555 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. While LUBA does not formally defer to agency interpretations, it may properly look to agency interpretations for guidance in interpreting agency rules. *DLCD v. Jackson County*, 33 Or LUBA 302 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. The word "shall," used in a regulation, expresses what is mandatory. A local government interpretation to the contrary is indefensible and will not be affirmed by LUBA. *DLCD v. Tillamook County*, 33 Or LUBA 163 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.705 precisely states comprehensive criteria that govern when a lot-of-record dwelling may be allowed. Under ORS 183.400 and ORS 215.304(3), OAR 660-33-020(4) cannot be interpreted to prohibit what the statute otherwise allows. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.705 cannot be interpreted or supplemented by LCDC rule to provide that the reconfiguration of a tract through the sale of one or more lots extinguishes the right to build a dwelling on at least one of the lots of record within the original tract. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

1.1.1 Administrative Law – Interpretation of Law – Generally. Lot-of-record provisions should be interpreted as limited in their application to property owners who had a reasonable expectation in 1985 of a right to build a home. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. The term "present owner," as it is used in ORS 215.705(1)(a), refers to a land sale contract vendee, not a land sale contract vendor. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. The word "owner," as it is used in ORS 215.705, is not defined, and when applied to land generally, has no fixed and inflexible meaning. *Walz v. Polk County*, 31 Or LUBA 363 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. A requirement that a *significant* amount of firearms training occur at a firearms training facility is not demanding enough under OAR 660-06-025(4)(m), because it places no limitation on other activities not directly related to or justified by firearms training. *J.C. Reeves Corp. v. Washington County*, 31 Or LUBA 115 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will not defer to the opinion of an agency official, given informally after the adoption of an administrative rule, as to the meaning of that rule. *J.C. Reeves Corp. v. Washington County*, 31 Or LUBA 115 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. A zoning ordinance provision that states land use districts may "float" within the boundaries of a proposed planned development can be interpreted to mean that such districts may be dissolved and totally reconfigured, with densities reallocated. *Huntzicker v. Washington County*, 30 Or LUBA 397 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.829(2) permits LUBA, in cases where a local government fails to interpret adequately a provision of its land use regulations, to make its own determination of whether the local government decision is correct. *Thompson v. City of St. Helens*, 30 Or LUBA 339 (1996).

1.1.1 Administrative Law – Interpretation of Law – Generally. A comprehensive plan policy that does not set out approval criteria for a land use permit decision may nevertheless state an underlying purpose or policy with which the county's interpretation of its zoning ordinance must be consistent. *DLCD v. Tillamook County*, 30 Or LUBA 221 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. Although ORS 197.829(2) allows LUBA, in certain circumstances, to interpret a local ordinance to the extent necessary to determine whether a local land use decision is correct, it is still the local government's responsibility to interpret its own comprehensive plan and land use regulations in the first instance, and LUBA is not required to do so. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.835(9)(b) and 197.829(2) authorize LUBA to remedy minor oversights and imperfections in local government land use decisions, but do not permit or require LUBA to assume the responsibilities assigned to local governments, such as the weighing of evidence, the preparation of adequate findings and the interpretation of comprehensive plans and local land use regulations. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. When petitioners fail to satisfy the county's jurisdictional appeal provision requiring local appellants to state the basis of their standing, the county is not at liberty to take notice of petitioner s' standing or to excuse their failure satisfy the requirement as "harmless error." *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. When a county zoning ordinance provision states that a local appeal will be dismissed if the requirements of the provision are not satisfied, the provision is jurisdictional. An appellant's failure to satisfy a jurisdictional requirement results in dismissal of the appeal. *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. Code demolition permit pre-application requirements that the owner of historic property "endeavor to prepare an economically feasible plan" for preservation and "solicit purchase offers" must be interpreted in light of other code demolition permit provisions which clearly leave the decision to sell or not sell the historic property up to the property owner. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government's zoning ordinance establishes a process for administrative actions to determine the existence of nonconforming uses, and another local ordinance gives a compliance hearings officer jurisdiction over complaints regarding violations of the zoning ordinance, it is reasonable and correct to interpret these ordinances to require that the existence of a nonconforming use be determined

through an administrative action, not raised as a defense in a compliance proceeding. *Watson v. Clackamas County*, 28 Or LUBA 602 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local code requires that a second farm dwelling be shown "conclusively" to be "necessary for the operation of the commercial farm," but does not define the term necessary, it is appropriate to use the dictionary definition of the term "necessary." *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA assigns no particular weight to a post-enactment statement by an agency administrator concerning the meaning of an administrative rule. *Sensible Transportation v. Washington County*, 28 Or LUBA 375 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Documents prepared during the proceeding leading to the adoption of an administrative rule are legitimate administrative history which LUBA may consider in interpreting the administrative rule. *Sensible Transportation v. Washington County*, 28 Or LUBA 375 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local code defines the term "feedlot" to involve animals that are prepared for shipment to "market," it is neither reasonable nor correct to interpret "market" to mean only the "final" market to which the animals are shipped. *Derry v. Douglas County*, 28 Or LUBA 212 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county does not err by interpreting a local code provision allowing "commercial or processing activities that are in conjunction with timber and farm uses," in a rural residential zone, in the same way the Oregon Supreme Court has interpreted similar language in the exclusive farm use zoning statutes. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. A hearings officer correctly construes a local code provision allowing "commercial or processing activities that are in conjunction with timber and farm uses "in the relevant rural area to require that a landscaping business' sales and purchases be primarily to customers and from suppliers that constitute timber or farm uses in the relevant rural area. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the term "farm use" is defined in a rural residential zone to include noncommercial farms, and it appears from the challenged decision that the hearings officer may not have considered noncommercial farms in determining whether a landscaping business qualifies as a commercial or processing activity "in conjunction with timber and farm uses," the decision will be remanded. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government decision amending its land use regulations does not interpret comprehensive plan goals and map designations as being inapplicable to such amendments, but rather explains how the proposed amendment implements certain comprehensive plan goals and is consistent with certain plan map designations, it is clear the governing body interprets those plan goals and map designations as

being applicable to the land use regulation amendment. *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.307(5)(d) expresses an alternative standard that is satisfied if the exterior materials of a manufactured home *either* (1) are similar those commonly used on dwellings in the community, *or* (2) are comparable to those used on surrounding dwellings. Because local governments cannot adopt standards more restrictive than those set out in ORS 197.307(5), a city cannot interpret a local regulation implementing ORS 197.307(5)(d) as allowing it to require, in a particular instance, that a manufactured home *must* satisfy the second alternative. *Brewster v. City of Keizer*, 27 Or LUBA 432 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.316(1) (1993) expresses a legislative intent to retroactively prohibit counties from designating resource lands as marginal lands, and from adopting plan and code provisions allowing additional nonresource uses on such marginal lands, after January 1, 1993. ORS 215.316(1) (1993) does not express an intent to retroactively prohibit counties that have *not* designated marginal lands from applying either ORS 215.283 (1991) or the supposedly stricter provisions of 215.213(1) to (3) (1991) to their exclusive farm use zones. *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under ORS 197.829, LUBA is required to defer to a local government's interpretation of its own enactments, unless the local interpretation is contrary to the express words, purpose or policy of the enactment, or is inconsistent with a statute, goal or rule that the enactment implements. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. The comprehensive plan provisions comprising a city's urban growth management program are clearly designed to implement Statewide Planning Goals 11 and 14. Therefore, a city errs in interpreting such plan provisions to allow the extension of urban sewage treatment service outside an urban growth boundary. *DLCD v. City of Donald*, 27 Or LUBA 208 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a code provision requires that effects on an area's "appearance and function" be determined based specifically on factors set out in that provision, a local government may interpret the code provision to be satisfied by a determination based solely on those factors, even if the code also provides that words have their "normal dictionary meaning," and the dictionary definitions of "appearance" and "function" suggest additional factors are relevant. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 197.829(1), (2) and (3) essentially codify the standard of review imposed by *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). ORS 197.829(4) limits or qualifies the *Clark* standard of review in certain circumstances. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government interpretation of one of its forest zones in a manner that would permit asphalt batch plants to operate permanently, so long as there were periodic interruptions, does not conflict with the Goal 4 rule, which envisions both permanent and temporary asphalt batch plants. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Absent some specific indication of contrary intent, terms are read consistently throughout a statute. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where an exclusive farm use zone does not allow asphalt batch plants or their accessory uses, and petitioner contends the county erred by permitting a private access road across exclusive farm used zoned property to serve an asphalt batch plant, the county must respond in its decision to that interpretive question. Where the county fails to do so and simply concludes such roads are allowable, the decision must be remanded so that the county can adopt an interpretive response adequate for LUBA review. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county surface mining ordinance that retains several operating and reclamation standards from the prior surface mining ordinance did not "repeal" the prior ordinance, because the new ordinance does not "supersede all material particulars" of the prior ordinance. *Oregon City Leasing, Inc. v. Columbia County*, 26 Or LUBA 203 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government has not adopted traditional, strict variance standards, it may interpret a variance approval standard requiring a variance to be "the minimum variance necessary to make reasonable use of the property" as requiring that (1) the proposed use be a reasonable use of the subject property, and (2) the requested variance be the minimum necessary to allow the proposed use. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government cannot simply conclude its failure to list shopping centers as a permitted or conditional use in any existing zoning district creates an ambiguity and, on that basis, determine it will allow shopping centers as a conditional use in a particular zoning district. Such an action constitutes improperly amending the zoning ordinance in the guise of interpreting it. *Loud v. City of Cottage Grove*, 26 Or LUBA 152 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under ORS 215.448(1)(c), home occupations may not be conducted outside the dwelling and other buildings normally associated with permitted uses in the zone. ORS 215.448(1)(c) does not provide for a *de minimis* exception to that requirement. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code provision requiring that "consideration * * * be given to [certain specified] factors" does not establish mandatory approval standards for local government decisions, but rather merely lists "factors"

which the local government must consider. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA must defer to a local government's interpretation of its own land use regulations unless the interpretation is clearly wrong. A county interpretation that a facility for an annual equestrian event qualifies as a "rodeo" or a "livestock arena" is not clearly wrong. *Cooley v. Deschutes County*, 25 Or LUBA 350 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA is not bound by legal precedents established by circuit court decisions in unrelated cases. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the local code requires that the subject property be reasonably suited for the "use proposed," a local government does not err by determining the suitability of the entire parcel for the proposed use and not just the site of the proposed residence. *Clarke v. City of Hillsboro*, 25 Or LUBA 195 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government interpretation of a local code provision which prohibits direct access to major collectors by commercial, industrial and institutional uses with more than 150 feet of frontage as not applying to proposed residential subdivisions with more than 150 feet of frontage is reasonable. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local government may interpret the term "processing of aggregate," as used in an industrial zoning district of its code, to include asphalt plants, even though the code language was adopted at a time when LUBA had interpreted similar language in the EFU statute not to include asphalt plants. *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. While a local government is not obliged to respond to a taking claim raised during the local proceedings, the local government should, in the first instance, have an opportunity to respond to a taking issue during the local proceedings. Where there is more than one possible interpretation of the local approval standards, the local government should have the opportunity to adopt an interpretation that is constitutional. *Larson v. Multnomah County*, 25 Or LUBA 18 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. A requirement in a local code that development be "consistent" with comprehensive plan policies and standards, is a general requirement that does not transform otherwise nonmandatory plan standards into approval standards. *McGowan v. City of Eugene*, 24 Or LUBA 540 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. While a local government is not *obliged* to respond to a taking claim raised during the local proceedings, the local government should, in the first instance, have an opportunity to respond to a taking issue during the local proceedings. Where there is more than one possible interpretation of the local approval standards,

the local government should at least have the opportunity, if possible, to adopt an interpretation that is constitutional. *Larson v. Multnomah County*, 24 Or LUBA 629 (1993).

1.1.1 Administrative Law – Interpretation of Law – Generally. It is clearly contrary to the express terms of a local ordinance standard requiring a determination that "the type of farm products produced on the applicant's farm" be unrepresented within a particular area, to determine the standard is satisfied by a showing that there are no similar farm management methodologies employed on farms in the designated area. *Giesy v. Benton County*, 24 Or LUBA 328 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. That area farms produce either purebred cattle or sheep, rather than a combination of purebred cattle and she ep, is not a basis for determining there are no similar farm products produced in the designated area. *Giesy v. Benton County*, 24 Or LUBA 328 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a "substantial construction" standard in a local code is clear enough for an applicant to know what he must show during the application process, such a standard is not impermissibly vague. *Columbia River Television v. Multnomah County*, 24 Or LUBA 82 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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).

1.1.1 Administrative Law – Interpretation of Law – Generally. Subsequent changes in county ordinances do not affect an energy facility for which a site certificate has been approved by EFSC. Under ORS 469.400(5), a county is required to issue the "appropriate permits" for such an energy facility, regardless of whether a subsequent change in county ordinances makes the "appropriate permit" a type different from that which was appropriate when the site certificate was approved. *McDole v. Lane County*, 23 Or LUBA 500 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the maximum penalty for each separate violation of an ordinance is 500 dollars, and there is no possibility of imprisonment for violating the ordinance, the penalties provided by the ordinance are civil, not criminal, in nature. Therefore, a vagueness challenge based solely on the constitutional vagueness analysis applied where criminal sanctions are possible, provides no basis for reversal or remand of such ordinance. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local ordinance that prohibits the short term rental use of dwellings in residential zones is not an unlawful rent control regulation under ORS 91.225. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code jurisdictional requirement that the local appeal document, which under the code includes the required appeal fee, be "signed" but which does not state *where* such signature must be located, is satisfied by the local appellant's signature on his personal check submitted as the filing fee. *Breivogel v. Washington County*, 23 Or LUBA 143 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. The language in ORS 197.247(1)(a) that "[t]he proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983 * * *" applies to forest as well as farm operations. *DLCD v. Lane County*, 23 Or LUBA 33 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a local government elects to limit the length of cul-de-sac streets, it may also establish how the length of such streets is to be measured. However, where no particular method of measuring the length of cul-de-sac streets is specified in its land use regulations, the local government must determine length applying the regulations as they are written and applying the plain and ordinary meaning of the operative term "length." *Sully v. City of Ashland*, 23 Or LUBA 25 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. 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 734 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a proposed residential detoxification facility will take blood pressure and body temperature of potential admittees, but will refuse to admit anyone in need of medical attention and will not provide any medication or medical treatment on site, a local government's determination that the proposed facility will provide "primarily" health care is erroneous as a matter of law. *Harmony House, Inc. v. City of Salem*, 22 Or LUBA 629 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. A permit condition stating all log trucks must "depart the [subject] property as near to 4:00 a.m. as possible "is correctly interpreted to require that all log trucks must leave the subject property at 4:00 a.m., unless it is not possible to do so. Such a condition is violated where log trucks departed from the property on several occasions at 6:30 a.m. for the convenience of the applicant's logging operation. *Marson v. Clackamas County*, 22 Or LUBA 497 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. A statutory change in the tribunal with appellate jurisdiction affects the legal rights and obligations of parties arising out of

past transactions, and retrospective application of such a change in jurisdictional statutes to pending appeals is not appropriate. *Schultz v. City of Grants Pass*, 22 Or LUBA 457 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. The factors listed in ORS 822.140(3)(a) to (f) are considerations for the adoption of ordinances regulating the siting or expansion of wrecking yards. These factors are not approval standards for applications for local approval of individual Department of Motor Vehicles wrecking certificates. *Bradbury v. City of Independence*, 22 Or LUBA 398 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. A comprehensive plan provision requiring that conflicts between conditional uses and airports be "minimized" is not violated by approval of a proposed conditional use simply because other possible uses allowed in the zone would have *fewer* conflicts with airports. So long as conflicts between the proposed conditional use and airports are minimized, that other possible uses might have fewer conflicts is irrelevant. *Waker Associates, Inc. v. Clackamas County*, 22 Or LUBA 233 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Whether the provisions of a zoning ordinance "purpose" section are approval criteria for individual land use decisions depends on the wording of the specific provisions and their context. *Tylka v. Clackamas County*, 22 Or LUBA 166 (1992).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a zoning ordinance definition of "motel" is broad enough to include transient housing available only to groups using a convention center, the city may properly consider such transient housing as motel units available to satisfy temporary housing demand. *Hay v. City of Cannon Beach*, 21 Or LUBA 364 (1991).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA cannot take official notice of local legislative history. Therefore, because LUBA's review is confined to the record of the local proceeding, LUBA cannot consider local legislative history if it is not in the record. *19th Street Project v. City of the Dalles*, 20 Or LUBA 440 (1991).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the comprehensive plan requires an "urban level of service" of schools, but does not define "urban level of service," a city does not err in interpreting that term consistent with the school district's "considerations" for providing adequate school facilities. However, because those school district considerations were not adopted by the city as standards, the city did not err by failing to adopt findings specifically addressing each consideration when approving a development. *Axon v. City of Lake Oswego*, 20 Or LUBA 108 (1990).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where plan standards identify nonfarm uses that may be allowed in the county's exclusive farm use zone and require that such uses be "minimized," a plan standard requiring that "development" not occur on lands capable of sustaining accepted farming practices is properly interpreted as not applying to the nonfarm uses specifically allowed in the exclusive farm use zone. *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990).

1.1.1 Administrative Law – Interpretation of Law – Generally. There is no irresolvable conflict between a plan standard directing that golf courses be allowed in an exclusive farm use zone and a plan standard providing that development may not occur on lands capable of sustaining accepted agricultural practices. *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the comprehensive plan is defined as including the plan policy document, plan map, zoning map and zoning and subdivision ordinances, as well as a number of other documents, a local code provision requiring that individual land use decisions comply with the comprehensive plan is not correctly interpreted as requiring compliance with only the zoning map and zoning and subdivision ordinances. *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990).

1.1.1 Administrative Law – Interpretation of Law – Generally. The legislative history of a bill includes all items in the official state records documenting its enactment, including staff measure analyses and exhibits to legislative committee hearing minutes. *Foland v. Jackson County*, 18 Or LUBA 731 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. The destination resort statute was intended to codify the parallel provisions of Goal 8, as they were interpreted when the statute was enacted; and, therefore, the administrative history of those Goal 8 provisions is relevant to interpretation of the destination resort statute. *Foland v. Jackson County*, 18 Or LUBA 731 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. LUBA will consider legislative or administrative history materials, when such materials are necessary to its interpretation of statutes, administrative rules or ordinances, regardless of whether the materials are in the record of the proceedings below. *Foland v. Jackson County*, 18 Or LUBA 731 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Some weight should be given, in interpreting the destination resort statute, to DLCD's interpretations of the identical Goal 8 provisions, as DLCD is charged with adopting and administering the statewide planning goals. *Foland v. Jackson County*, 18 Or LUBA 731 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. When LUBA interprets a provision of a comprehensive plan or zoning ordinance, it construes the plan or ordinance as a whole and gives effect to its overall policy. *Beck v. City of Tillamook*, 18 Or LUBA 587 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. The meaning of local legislation is a question of law which must be decided by LUBA on appeal. *Beck v. City of Tillamook*, 18 Or LUBA 587 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where city ordinance (1) allows "public facility" as a conditional use in a commercial zone, (2) defines public facility as a facility deemed necessary for "the maintenance of public purposes," (3) does not distinguish between residential and nonresidential "public facilities," and (4) lists hospitals and nursing homes as examples of uses considered to be "public facilities," "public facility" can include uses which are

residential in nature, such as a homeless shelter. *Beck v. City of Tillamook*, 18 Or LUBA 587 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where county comprehensive plan policies provide that structural methods of shoreline stabilization will only be allowed if (1) an existing structure is threatened by erosion, (2) that threat creates a critical need to protect the structure, and (3) higher priority methods will not work to provide adequate protection to the structure, LUBA interprets "critical need to protect the structure" to mean that it is reasonably probable that the structure will suffer damage due to the threatened erosion in the near future. *Gray v. Clatsop County*, 18 Or LUBA 561 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. When LUBA interprets a provision of a comprehensive plan or zoning ordinance, it construes the plan or ordinance as a whole and gives effect to its overall policy. Also, where possible, LUBA reads plan or ordinance provisions together in a manner which gives meaning to all their parts. *Gray v. Clatsop County*, 18 Or LUBA 561 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. The correct interpretation of local ordinance provisions is a question of law. The provisions of a comprehensive zoning ordinance should be construed as a whole, and effect given to the ordinance's overall policy. *Miller v. City of Dunes City*, 18 Or LUBA 515 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where standards embodied in a local comprehensive plan goal and the policies that follow the goal are subjective and generally worded, the local government applying such goa ls and policies enjoys significant discretion in determining whether particular factors are sufficient to show that a proposal is consistent with or supportive of the goal. *Henry v. City of Portland*, 18 Or LUBA 440 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Internally contradictory and generally worded local planning goals must be read as a whole, so that the overall public policy expressed in the goal is not frustrated. *Henry v. City of Portland*, 18 Or LUBA 440 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. The application of a particular zoning designation to a parcel is not the equivalent of a determination that an existing use on such parcel conforms with the particular zoning designation applied. *Moorefield v. City of Corvallis*, 18 Or LUBA 95 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where an ordinance provision requires *both* that a proposed use comply with all "local, state and federal standards," and that the proposed use not "create a nuisance," the local government's determination that the proposed use complies with DEQ regulations does not remove the necessity for an independent determination that the proposed use will not "create a nuisance." *Moorefield v. City of Corvallis*, 18 Or LUBA 95 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.448(1)(c) requires only that an existing building proposed to be used for a home occupation, be a *structure* normally

found in association with uses permitted in the zone. It does not require, in an exclusive farm use zone, that any part of such building be used for farm use concurrently with its use for the home occupation. *Joseph v. Lane County*, 18 Or LUBA 41 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where local government ordinance provisions are drafted to correspond to a state statute, it is appropriate to construe those ordinance provisions consistently with the statute. *Joseph v. Lane County*, 18 Or LUBA 41 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 215.448(3) limits the approval of new buildings for use for home occupations. It does not impose additional limitations on the use of existing buildings for home occupations. *Joseph v. Lane County*, 18 Or LUBA 41 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the county code provides that types of uses not otherwise permitted in an exclusive farm use zone may be allowed as home occupations, it is incorrect to interpret a code requirement that a home occupation not interfere with nearby existing uses or with other uses permitted under the exclusive farm use zone as presuming that noise not agricultural in nature constitutes interference with adjoining uses. *Joseph v. Lane County*, 18 Or LUBA 41 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. A plan policy which provides guidance as to which zoning district to apply to a given area is not an approval criterion for conditional use permits. *Highway 213 Coalition v. Clackamas County*, 17 Or LUBA 1284 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. The wording and context of a specific code intent and purpose statement determines whether that provision should be interpreted to impose mandatory approval criteria. *Randall v. Washington County*, 17 Or LUBA 1202 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. The legislature's use of the term "may" in ORS 443.600(3), 215.213(2)(m) and 215.283(2)(n), with regard to allowing "residential homes" on land zoned for exclusive farm use, demonstrates that the legislature did not intend to *require* counties to authorize "residential homes" as a conditional use on EFU zoned land. *Mental Health Division v. Lake County*, 17 Or LUBA 1165 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. A county interpretation that a notice of appeal from a planning commission decision is properly filed prior to the date the planning commission decision became final, is a correct interpretation of the ordinance, absent ordinance language requiring the decisions of the planning commission be reduced to writing before those decisions may be considered final for purposes of appeal. *Thompson v. Columbia County*, 17 Or LUBA 818 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. A local code that is internally inconsistent is ambiguous. *Kenton Neighborhood Assoc. v. City of Portland*, 17 Or LUBA 784 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. The courts and LUBA are finally responsible for the interpretation of local enactments. However, where an erroneous interpretation of other code provisions results in a city failing to interpret and apply an ambiguous provision of its code, LUBA will remand the decision to the city for it to interpret and apply the applicable provision in the first instance. *Great Northwest Towing v. City of Portland*, 17 Or LUBA 544 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. To find a proposed conditional use is "appropriate," as required by local standards governing conditional uses, does not require a finding that there will be no adverse impacts. *Coffey v. City of North Bend*, 17 Or LUBA 527 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where an ordinance expressly provides that listed examples are not an inclusive list of "governmental structures or land uses," a public educational facility and county office building may be considered governmental structures of land uses. *Bennett v. City of Dallas*, 17 Or LUBA 450 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a city ordinance provides that structures must have "comparable scale" and "comparable architectural features" to the existing structures in the neighborhood, LUBA cannot agree with the city that a proposed 110-foot water tower and adjacent houses have comparable scale and architectural features. *Sunburst II Homeowners v. City of West Linn*, 17 Or LUBA 401 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. An approval criterion which requires the provision of an adequate buffer and that certain factors be assessed in determining the adequacy of such buffer, vests considerable discretion in the approval authority. *Sunburst II Homeowners v. City of West Linn*, 17 Or LUBA 401 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the county code's "commercial activities that are *exclusively* used in conjunction with farm use" (emphasis added) standard is worded more stringently than ORS 215.283(2)(a), it is appropriate to interpret the code provision to restrict severely the commercial activities allowed. The county's interpretation of its code standard not to include a use which would process an unspecified amount of minerals, and other materials that are not farm or forest products, is both reasonable and correct. *Kellogg Lake Friends v. Clackamas County*, 17 Or LUBA 369 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where local government ordinance was drafted to implement a state statute or statewide planning goal, and adopts the statutory or goal language without expressing an intent to deviate from the statutory or goal intent, it is proper to construe the ordinance provisions consistently with the statute or goal. *Kellogg Lake Friends v. Clackamas County*, 17 Or LUBA 277 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Interpreting the county's Willamette River Greenway zoning district requirement for a setback from "mean low water level" to refer only to the Willamette River, and not to other bodies of water within the Greenway, is

reasonable and consistent with other related plan and ordinance provisions. *Kellogg Lake Friends v. Clackamas County*, 17 Or LUBA 277 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where local ordinance language corresponds to the overall "Goal" statement of Statewide Planning Goal 15 (Willamette River Greenway), and there are no other local plan or ordinance provisions or legislative history which indicates an intent that the ordinance phrase "lands along the Willamette River" be interpreted differently than the same phrase in Goal 15, the phrase is interpreted to include all land within the Greenway. *Kellogg Lake Friends v. Clackamas County*, 17 Or LUBA 277 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. After-the-fact testimony from persons involved in the legislative process concerning their opinion as to what legislators intended when they enacted legislation is incompetent for the purpose of determining legislative intent. *Kellogg Lake Friends v. Clackamas County*, 17 Or LUBA 277 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a provision of county ordinance was drafted to correspond to a state statute, it is appropriate to construe that ordinance provision consistently with the statute, in light of any existing authority analyzing or applying that statute. *McCaw Communications, Inc. v. Marion County*, 17 Or LUBA 206 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. The amendment of ORS 215.213(1)(d) by Oregon Laws 1983, chapter 827, section 27b was clearly intended to *limit* transmission towers, previously allowable in EFU zones as "utility facilities necessary for public service," to those 200 feet or less in height. *McCaw Communications, Inc. v. Marion County*, 17 Or LUBA 206 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where the county code defines a structure as "anything * * * constructed and located on * * * the ground," and exemptions from the requirement for a development permit for certain accessory uses apply only if no structure is permitted, LUBA will conclude that a bridge and sidewalk incidental to residential construction are subject to the development permit requirement. *Peyton v. Washington County*, 17 Or LUBA 92 (1989).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where ORS 215.213(2), together with the county code, require that commercial activities in conjunction with farm use comply with the purpose and intent of the county's EFU zone, the county properly concluded a proposed restaurant in conjunction with a winery was inconsistent with the intent and purpose of the EFU zone, unless conditioned to make the restaurant subordinate and auxiliary to the winery. *Flynn v. Polk County*, 17 Or LUBA 68 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Statutory prohibitions against retroactive land use regulations protect uses that *exist* when the regulations are adopted, not uses that could have been, but were not, initiated. *Schoonover v. Klamath County*, 16 Or LUBA 846 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Under ORS 197.605 to 197.635 (1981), the running of the 30-day period for filing objections to or appeals of post-acknowledgment amendments is contingent upon the objector or appellant being given the notice of the decision required by ORS 197.615. *Kellogg Lake Friends v. City of Milwaukie*, 16 Or LUBA 755 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. An ordinance provision which states that a county appellate body overturning or modifying a previous decision must make certain findings will not be interpreted to alter the general authority given by the ordinance to county decision makers to impose conditions when approving land use actions. *Sevcik v. Jackson County*, 16 Or LUBA 710 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. The interpretation of local ordinance provisions is a question of law which LUBA reviews for correctness. *Sevcik v. Jackson County*, 16 Or LUBA 710 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. County interpretation of a condition of partition approval requiring dust free maintenance of a road to apply only during construction is incorrect because such interpretation is inconsistent with the common meaning of "maintenance" and the use of that term elsewhere in the county code. *Barbee v. Josephine County*, 16 Or LUBA 695 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where neither county plan nor implementing ordinances identify Douglas fir as the sole indicator species for determining whether land is "commercial forest land," the plan's definition of "commercial forest land" cannot be interpreted as encompassing only production of Douglas fir. *Holland v. Lane County*, 16 Or LUBA 583 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. The city's decision to allow use of the subject property for other than a school is not error where the city comprehensive plan and zoning maps identify the subject property as a future school site, but the plan text clearly provides that school sites are intended to indicate general locations and not specific sites. *Dickas v. City of Beaverton*, 16 Or LUBA 574 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. It is reasonable and correct to interpret an ordinance standard that a proposed use "at the particular location is desirable to the public convenience and welfare" as requiring determinations that (1) there is a public need for the proposed use, and (2) the proposed location is suitable for meeting that public need. *Tournier v. City of Portland*, 16 Or LUBA 546 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. City's interpretation of its code to require compliance with both preexisting use reestablishment standards and current Greenway Scenic Development Overlay (WSD) standards applicable to changes and intensification is reasonable. *Sellwood Harbor Condo Assoc. v. City of Portland*, 16 Or LUBA 505 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where ambiguity exists in acknowledged comprehensive plan and code provisions, the county's reasonable interpretation of the provisions will be upheld. *Bergstrom v. Klamath County*, 16 Or LUBA 435 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. An ordinance requirement that a proposed nonfarm partition and dwelling "does not materially alter the stability of the overall land use pattern of the area" is not satisfied by consideration only of parcels adjoining the proposed development site or the access road leading to the proposed development site, as such consideration would not provide analysis of the "overall land use pattern of the area." *Morley v. Marion County*, 16 Or LUBA 385 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Zoning ordinance provision requiring that development be compatible with the "scenic view" does not require city to consider compatibility of a proposed motel with other existing structures in the vicinity. *Marineau v. City of Bandon*, 16 Or LUBA 375 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where city comprehensive plan includes policies promoting development along a bluff above the ocean and policies which address the view of the ocean from this bluff, the city may interpret its zoning ordinance provision requiring that development on the bluff be compatible with the "scenic view" to protect only the view of the Pacific Ocean from the bluff, not the scenic view of the bluff from the beach. *Marineau v. City of Bandon*, 16 Or LUBA 375 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Absent clear language limiting the time a waiver may be granted under a code section providing for waiver of appeal fees, the county's interpretation of that provision to allow waiver of the appeal fee after the appeal period has run is reasonable and LUBA will defer to it. *Rustrum v. Clackamas County*, 16 Or LUBA 369 (1988).

1.1.1 Administrative Law – Interpretation of Law – Generally. Absent a showing that a residential PUD will increase noise levels beyond those expected of residential development permitted by right in the subject zone, there can be no violation of a city policy which protects neighborhoods from "detrimental noise pollution." *Semler v. City of Portland*, 16 Or LUBA 320 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. It is reasonable to interpret an ordinance permit approval criterion that the proposed use "not have a significant adverse impact on identified fish or wildlife habitat "to refer only to sensitive fish or wildlife habitat areas identified as such on maps in the county's comprehensive plan. *McCoy v. Linn County*, 16 Or LUBA 295 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. "Compatibility," as used in the planning and zoning context, requires that uses be capable of co-existing harmoniously, not that there be no adverse impact or interference of any type. *McCoy v. Marion County*, 16 Or LUBA 284 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a county ordinance prohibits "contamination or impairment" of groundwater aquifers, but neither "contamination" nor "impairment" is defined in the county plan or ordinances, a county interpretation that there is no "contamination" or "impairment" so long as the turbidity increase does not exceed 10 percent is reasonable. *Lousignont v. Union County*, 16 Or LUBA 272 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. A road vacation petition signed by contract purchasers, rather than owners, of subject and abutting property does not authorize a county to conduct summary road vacation proceedings under ORS 368.351, even if the county makes the vacation contingent upon completion of purchase. *Harding v. Clackamas County*, 16 Or LUBA 224 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. ORS 368.351 allowing a shortened procedure for vacation of county roads, without notice and hearing, when "owners of 100% of any private property proposed to be vacated and * * * owners of 100% of the property abutting any public property proposed to be vacated" consent to the vacation, is available only when all owners of all recorded interests consent to the street vacation. *Harding v. Clackamas County*, 16 Or LUBA 224 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where county ordinance defines mobile homes as structures manufactured after a certain date, a unit manufactured before that date is not a mobile home within the definition of the county's ordinance. *Schnidrig v. Hood River County*, 16 Or LUBA 215 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where county ordinance describes a double-wide mobile home as affixed to real property by a continuous concrete wall foundation or other appropriate foundation, LUBA will sustain the county in its interpretation that this foundation requirement is a set-up requirement, not a feature defining whether a particular unit is or is not a double-wide mobile home. *Schnidrig v. Hood River County*, 16 Or LUBA 215 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where county ordinance does not define the width of double-wide mobile homes, and nothing in the ordinance suggests the width of a particular structure meets or does not meet the definition of a single-wide or a double-wide mobile home, petitioner's claim that the county erred in applying its definitions of single-wide and double-wide mobile homes by failing to make findings on the width of a particular mobile home will fail. *Schnidrig v. Hood River County*, 16 Or LUBA 215 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a county ordinance defines a double-wide mobile home as a combination or joining of two or more chassis or sections, but does not define "chassis," a county interpretation that each section of a type of mobile home which is single width when transported, but which extends along its full length when installed in the ground, is supported by its own chassis is reasonable and not contrary to the language of the ordinance. *Schnidrig v. Hood River County*, 16 Or LUBA 215 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. A city is entitled to weigh conflicting provisions in its planning documents, particularly where the provisions are stated in

general terms rather than as approval standards applicable to all development. *Marshall v. City of Eugene*, 16 Or LUBA 206 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. City tentative PUD approval of a golf course does not violate a charter provision authorizing use of bond proceeds to acquire property for "recreational uses." *Marshall v. City of Eugene*, 16 Or LUBA 206 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Increasing the types of uses authorized in existing commercial areas does not violate plan policy that areas for commercial centers should not be increased without a showing of need. *Greenwood Inn v. City of Beaverton*, 16 Or LUBA 177 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Plan provision describing the effect on auto use from limited commercial development in CI zone is a description, not a goal or policy, and therefore not a criterion for the selection of types of commercial use appropriate in the CI zone. *Greenwood Inn v. City of Beaverton*, 16 Or LUBA 177 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Adding hotels to the list of authorized commercial uses in the CI zone is not inconsistent with zone provision that all new commercial uses, including those listed, offer products or services primarily for the convenience or necessity of employees and businesses in the CI zone. *Greenwood Inn v. City of Beaverton*, 16 Or LUBA 177 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Given a comprehensive plan policy allowing a limited number of complementary commercial uses in industrial parks, the city may interpret the policy to allow hotels in its Campus Industrial (CI) zone. *Greenwood Inn v. City of Beaverton*, 16 Or LUBA 177 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Because nothing in Goal 15 or case law suggests that "greatest possible degree," as used in Goal 15, means something more restrictive than the city's definition, the city's interpretation is reasonable and LUBA will not overturn it. *Urquhart v. City of Eugene*, 16 Or LUBA 102 (1987).

1.1.1 Administrative Law – Interpretation of Law – Generally. Where a city's plan provides that planning decisions must be in accord with the "policies of the comprehensive plan," LUBA will interpret the plan policies as mandatory standards rather than mere guidelines. *Hummel v. City of Brookings*, 16 Or LUBA 1 (1987).

Administrative Law – Interpretation of Law. Where a county ordinance provides considerable discretion in deciding whether a proposed use will have more than a "minimal" impact on the area, LUBA is not empowered to substitute its judgment for the county's on matters of aesthetics and ordinance interpretation, providing the county's interpretation is reasonable. *Valley View Nursery v. Jackson County*, 15 Or LUBA 591 (1986).

Administrative Law – Interpretation of Law. Where county ordinance and ORS 215.283(1)(f) allow "dwellings and other buildings customarily provided in conjunction with farm use" as

permitted uses, a county determination as to whether a proposed dwelling is "customarily provided in conjunction with farm use" involves the exercise of judgment and discretion and, therefore, a building permit for such a proposed dwelling falls within the definition of "permit" found in ORS 215.402(4). *Doughton v. Douglas County*, 15 Or LUBA 576 (1986).

Administrative Law – Interpretation of Law. LUBA will deter to a county's interpretation of ambiguous provisions in its ordinance providing the interpretation is not contrary to the express language of the ordinance. *Mill Creek Glen Protec. Assn. v. Umatilla County*, 15 Or LUBA 563 (1986).

Administrative Law – Interpretation of Law. Where city ordinance provides that variances "ordinarily" should not be granted if the special circumstances upon which the applicant relies are a result of actions of the applicant, owner or previous owner, the city may approve a variance even where the exceptional circumstances relied upon are self-created. *Cope v. Cannon Beach*, 15 Or LUBA 546 (1986).

Administrative Law – Interpretation of Law. An ordinance variance standard that there be "exceptional or extraordinary circumstances or conditions * * * which do not apply generally to other properties in the same zone" requires a strict interpretation, that the "exceptional or extraordinary circumstances "must arise out of the land itself. *Cope v. Cannon Beach*, 15 Or LUBA 546 (1986).

Administrative Law – Interpretation of Law. Comprehensive plan policies which are described in the plan as serving "as a guide" to land use decision s are not mandatory approval standards, and therefore nonconformance with such policies is not grounds for remand by LUBA. *Citizens for Better Transit v. Metro Service Dist.*, 15 Or LUBA 482 (1986).

Administrative Law – Interpretation of Law. Ordinance which uses but does not define "special education," and refers to the financial impact on school districts imposed by state law but makes no reference to federal law, will be interpreted to use the definition of special education found in state law. *Lane County School Dist. 71 v. Lane County*, 15 Or LUBA 476 (1986).

Administrative Law – Interpretation of Law. Although public rights-of-way are generally assumed to be permitted in every zone, ordinance Greenway zone purpose and setback provisions limiting this zone designation to uses which are clearly water-dependent or water-related, together with an express provision that roads are not generally considered dependent on or related to a water location, make a city's interpretation of its Greenway zone as permitting freeways unreasonable. *Allen v. City of Portland*, 15 Or LUBA 464 (1986).

Administrative Law – Interpretation of Law. A city's interpretation of an ordinance Greenway exemption provision as applying to a freeway on-ramp is not reasonable where the ordinance provision reads as an exhaustive list of exempt uses, rather than as a guide to interpreting the ordinance, and freeway systems are not listed as exempt. *Allen v. City of Portland*, 15 Or LUBA 464 (1986).

Administrative Law – Interpretation of Law. A local government is entitled to interpret ambiguous provisions of its zoning code, and LUBA will defer to that interpretation if it is reasonable. *Hood River Valley Residents Comm. v. City of Hood River*, 15 Or LUBA 458 (1986).

Administrative Law – Interpretation of Law. Under county ordinance definition of "lot," adjacent t ax lots under common ownership do not constitute separate "lots." *Hopper v. Clackamas County*, 15 Or LUBA 413 (1986).

Administrative Law – Interpretation of Law. Under county ordinance definition of "lot," property under common ownership does not lose its unitary character as one lot simply because it happens to be divided by a road. *Hershberger v. Clackamas County*, 15 Or LUBA 401 (1986).

Administrative Law – Interpretation of Law. Land division ordinance street alignment requirement will be interpreted as applying to preexisting streets serving the proposed land division, absent specific ordinance language to the contrary. *Jarvis v. Wallowa County*, 15 Or LUBA 390 (1986).

Administrative Law – Interpretation of Law. Where a governing body is not required to take action on a submitted amendment to an urban renewal plan, its proceedings to consider the proposed amendment are legislative in nature. *Estate of Paul Gold v. City of Portland*, 15 Or LUBA 385 (1986).

Administrative Law – Interpretation of Law. City ordinance definition of multi-family dwelling will not be interpreted as including motels where such interpretation would allow motels in the city's residential zone, a result clearly inconsistent with the purpose of that zone. *Marineau v. City of Bandon*, 15 Or LUBA 375 (1986).

Administrative Law – Interpretation of Law. Ordinance design standard which expressly applies to "subdivisions, attached un it residential developments and commercial developments" will not be interpreted as applying to mobile home parks, because to do so would be adding words to the ordinance that are plainly not there. *Everts v. Washington County*, 15 Or LUBA 358 (1986).

Administrative Law – Interpretation of Law. In the absence of a provision in a new ordinance preserving approval procedures in the former ordinance, the new ordinance will control approval of all subdivision plats, including those plats receiving preliminary approval prior to the effective date of the new ordinance. *Rosenfeld v. City of Lake Oswego*, 15 Or LUBA 312 (1986).

Administrative Law – Interpretation of Law. County ordinance criterion for partitioning of an existing dwelling on forest land; which requires a finding that the dwelling "will not be needed to house forest help, does not require that a partition be denied because an existing dwelling might someday be needed to house forest workers. Such a criterion does require consideration of present use of the subject property, and perhaps of probable uses in the near future. *Rex v. Marion County*, 15 Or LUBA 293 (1986).

Administrative Law – Interpretation of Law. City's "judicial notice" of prior city approvals does not encompass supporting evidence submitted during the prior proceedings. *McNulty v. City of Lake Oswego*, 15 Or LUBA 283 (1986).

Administrative Law – Interpretation of Law. Where an ordinance provision is unambiguous, LUBA will not go beyond its plain language to create additional standards based upon speculation about legislative intent. *Wagner v. Marion County*, 15 Or LUBA 260 (1986).

Administrative Law – Interpretation of Law. Where the property petitioners wished the county to accept as a county road was not offered for dedication in the subdivision plat, approval of the subdivision did not constitute acceptance of the roadway. *Kegg v. Clackamas County*, 15 Or LUBA 239 (1986).

Administrative Law – Interpretation of Law. Where city ordinance imposed standard that there be no "objectionable conditions" associated with the proposed development, a city interpretation of this standard to allow consideration o f demands the use would impose on public safety services was reasonable, and a city finding that the proposal would overburden the city's police protection services is a proper basis for denial of the development application. *Texaco, Inc. v. King City*, 15 Or LUBA 198 (1986).

Administrative Law – Interpretation of Law. Where the text of an ordinance is clear, but the description of the text in an order applying the ordinance is incorrect, the text of the ordinance will control. *Texaco, Inc. v. King City*, 15 Or LUBA 198 (1986).

Administrative Law – Interpretation of Law. Where an ordinance can reasonably be interpreted in several ways, the interpretation by the body responsible for enacting it should control, especially where its interpretation is consistent with the ordinance as a whole. *Texaco, Inc. v. King City*, 15 Or LUBA 198 (1986).

Administrative Law – Interpretation of Law. The term "automobile service station" is ambiguous, and therefore susceptible to more than one reasonable interpretation. *Texaco, Inc. v. King City*, 15 Or LUBA 198 (1986).

Administrative Law – Interpretation of Law. A plan statement that "one aspect of flood plain management involves balancing the economic gain from flood plain development against the increase in flood hazard" need not be read as a plan policy or an approval standard. *Storey v. City of Stayton*, 15 Or LUBA 165 (1986).

Administrative Law – Interpretation of Law. Applicable plan policies which refer to "vacant lands within the corporate city limits" and "the city's useable land" require the city to consider all undeveloped land in the city, not just land in a single zoning district. *Storey v. City of Stayton*, 15 Or LUBA 165 (1986).

Administrative Law – Interpretation of Law. Ordinance provisions requiring conformity with the comprehensive plan generally and with specific plan provisions listed in the ordinance require consideration of the entire comprehensive plan. *Storey v. City of Stayton*, 15 Or LUBA 165 (1986).

Administrative Law – Interpretation of Law. Plan policy calling for referral of land use applications to agencies providing services to subject area does not suggest that the county loses jurisdiction over the application if the affected agencies are not notified, the policy is interpreted as a procedural requirement. *Lane County School Dist. 71 v. Lane County*, 15 Or LUBA 150 (1986).

Administrative Law – Interpretation of Law. Ordinance provision requiring governing body to request a report and recommendation from the planning commission before taking action on a comprehensive plan amendment will not be interpreted as applying to a plan amendment which has been remanded to the governing body from a reviewing body such as LUBA. *Lane County School Dist. 71 v. Lane County*, 15 Or LUBA 150 (1986).

Administrative Law – Interpretation of Law. Plan policy requiring proposed recreational uses to be compatible with surrounding development is not met by findings addressing compatibility only with adjacent EFU-zoned agricultural land. *Leonard v. Union County*, 15 Or LUBA 135 (1986).

Administrative Law – Interpretation of Law. Statutes allowing preexisting uses to continue after restrictive regulations are adopted do not permit expansion of the preexisting use. *Cantrell v. Wasco County,* 15 Or LUBA 127 (1986).

Administrative Law – Interpretation of Law. Where city ordinance distinguishes between "conventional subdivision" and "mobile home subdivision" but does not define either term, city refusal to redesignate a subdivision which included a conventionally built home to a mobile home subdivision was proper. *Joy v. City of Talent*, 15 Or LUBA 115 (1986).

Administrative Law – Interpretation of Law. Where a prior major partitioning included [in] a condition limiting the number of dwellings on a parcel, a division of the parcel will not defeat the prior condition. *Endresen v. Marion County*, 15 Or LUBA 60 (1986).

Administrative Law – Interpretation of Law. A county may consider the effect of partition applications against possible future applications under a criterion requiring that a nonfarm dwelling "not materially alter the stability of the overall land use pattern of the area." *Endresen v. Marion County*, 15 Or LUBA 60 (1986).

Administrative Law – Interpretation of Law. A finding that a proposed dwelling will have an adverse impact on farming or forest practices requires an explanation of the alleged adverse impact. *Endresen v. Marion County*, 15 Or LUBA 60 (1986).

Administrative Law – Interpretation of Law. A nonfarm dwelling may be sited on land generally not suitable for farm use although a majority of the parcel is suitable for farm use. The county should review the whole parcel for farm use suitability but may not insist the whole parcel be found unsuitable for farm use. *Endresen v. Marion County*, 15 Or LUBA 60 (1986).

Administrative Law – Interpretation of Law. Decisionmaker's requirement of a "heightened burden of proof" because of the magnitude of the requested change does not render proceeding constitutionally defective. *City of Wilsonville v. Metropolitan Service District*, 15 Or LUBA 44 (1986).

Administrative Law – Interpretation of Law. Denial of a requested zone change is not a de facto amendment of the comprehensive plan. *Robert Randall Company v. City of Wilsonville*, 15 Or LUBA 26 (1986).

Administrative Law – Interpretation of Law. Where a city plan designates particular geographic areas as "areas of special concern" to which special design criteria apply, the city must identify the area of special concern within which the affected property lies and the particular criteria to be applied. *Robert Randall Company v. City of Wilsonville*, 15 Or LUBA 26 (1986).

Administrative Law – Interpretation of Law. Where a city code does not state clearly that either "objectives" or "policies" must be satisfied but only requires compliance with comprehensive plan generally, a decision may be based on consideration of both plan "objectives" and "policies." *Robert Randall Company v. City of Wilsonville*, 15 Or LUBA 26 (1986).

Administrative Law – Interpretation of Law. Where a city comprehensive plan provides a method to resolve conflict between plan provisions, LUBA will sustain a city's reasonable interpretation utilizing the plan policy. *Robert Randall Company v. City of Wilsonville*, 15 Or LUBA 26 (1986).

Administrative Law – Interpretation of Law. Where city ordinance required that a structure be "complementary" to the "built environment" and the "natural environment," the city's findings stating only conclusions that the temple design meets the standard are not sufficient. *McNulty v. City of Lake Oswego*, 15 Or LUBA 16 (1986).

Administrative Law – Interpretation of Law. Where a provision of city's building design standard is not clear and unambiguous, LUBA may defer to a local government interpretation which is reasonable and not contrary to the ordinance. *McNulty v. City of Lake Oswego*, 15 Or LUBA 16 (1986).

Administrative Law – Interpretation of Law. Where governing body is not required to take action on an urban renewal amendment, LUBA will consider the amendment procedure to be legislative in nature. *Union Station Business Community Association v. City of Portland*, 15 Or LUBA 4 (1986).

Administrative Law – Interpretation of Law. ORS 197.835(8)(a)(C) authorizes relief where the decision is unsupported by substantial evidence, but does not require that there be substantial evidence addressing "issues" raised during permit hearings. *Oatfield Ridge Residents Rights v. Clackamas County*, 14 Or LUBA 766 (1986).

Administrative Law – Interpretation of Law. Statutes authorizing creation of parcels for nonfarm dwellings must be read in conjunction with ORS 215.243(3), which states a policy of

preserving the maximum amount of agricultural land in large blocks. *Hearne v. Baker County*, 14 Or LUBA 743 (1986).

Administrative Law – Interpretation of Law. A code provision allowing modification of off-street parking requirements if "substantially equal protection to the surrounding properties is afforded," requires consideration of the number of spaces and their location. *Callahan v. City of Portland*, 14 Or LUBA 678 (1986).

Administrative Law – Interpretation of Law. Where city parking regulation requires "legal evidence * * * that property is and will remain available for use as off-street parking space," an agreement permitting the parking space owner to cancel at will does not meet the regulation requirement. *Callahan v. City of Portland*, 14 Or LUBA 678 (1986).

Administrative Law – Interpretation of Law. The date the county mails statutorily required written notice of a permit decision is the date the decision becomes final for purposes of tolling the 21-day period of appeal under ORS 197.830(7). *Bainbridge v. Lane County*, 14 Or LUBA 546 (1986).

Administrative Law – Interpretation of Law. Although ORS 197.015(10) empowers a "local government" to make land use decisions, LUBA interprets ORS 215.050 and ORS 215.060 to grant exclusive responsibility for comprehensive plan adoption and amendments to county governing bodies rather than county planning commissioners or hearings officers. *1000 Friends of Oregon v. Washington County*, 14 Or LUBA 416 (1986).

Administrative Law – Interpretation of Law. A county comprehensive plan map amendment is not a "contested case" within the meaning of ORS 215.402(1) which can be decided by a planning commission under ORS 215.406. *1000 Friends of Oregon v. Washington County*, 14 Or LUBA 416 (1986).

Administrative Law – Interpretation of Law. Where a city comprehensive plan is ambiguous on question of whether a variance from a restriction may be allowed, the city's interpretation that a variance is allowable can be sustained if it is not clearly contradictory to the express language and intent of the plan. *Downtown Community Association v. City of Portland*, 14 Or LUBA 382 (1986).

Administrative Law – Interpretation of Law. Where comprehensive plan calculates parking spaces in mixed-use building based on floor area for office uses in the building, city cannot approve the parking spaces while allowing developer the option of not constructing the office-use component of the building. *Downtown Community Association v. City of Portland*, 14 Or LUBA 382 (1986).

Administrative Law – Interpretation of Law. Where a component of a city's comprehensive plan expresses parking ratio regulations in unambiguous, mandatory language, LUBA will not interpret these regulations as advisory despite other references to the ratios as "guidelines." *Downtown Community Association v. City of Portland*, 14 Or LUBA 382 (1986).

Administrative Law – Interpretation of Law. A city is not required to read a comprehensive plan goal in isolation, but may balance one goal with another in determining whether a project complies with the comprehensive plan. *Downtown Community Association v. City of Portland*, 14 Or LUBA 382 (1986).

Administrative Law – Interpretation of Law. Greenway policy in ORS 390.314 does not limit intensification of land use to "existing residential, commercial and agricultural uses" but rather declares the necessity of restriction on all development within the Greenway to preserve its "natural, scenic, historical and recreational qualities." *Urquhart v. LCOG and City of Eugene*, 14 Or LUBA 335 (1986).

Administrative Law – Interpretation of Law. An airstrip used by the owner as a base for owner's one airplane used in owner's logging business is a personal use airport as defined in ORS 215.213(2)(h). *Todd v. Douglas County*, 14 Or LUBA 307 (1986).

Administrative Law – Interpretation of Law. A City's reasonable interpretation of its comprehensive plan will be upheld. *Hannon v. Gresham*, 14 Or LUBA 192 (1986).

Administrative Law – Interpretation of Law. ORS 215.416(8) requires only that county standards for approval or denial of a permit application be clear enough for an applicant to know what must be shown during the application process. *Columbia River Television v. Marion County*, 14 Or LUBA 179 (1986).

Administrative Law – Interpretation of Law. Plan policies which prescribe performance or evaluation standards for specific actions or projects must be applied in the review of subdivision applications; county cannot disregard such plan policies on grounds zoning ordinance defines lands subject to regulation. *McCoy v. Tillamook County*, 14 Or LUBA 108 (1985).

Administrative Law – Interpretation of Law. Not all segments of a plan are intended to serve as decision making criteria. The legal effect of particular plan language depends largely on the text itself. *McCoy v. Tillamook County*, 14 Or LUBA 108 (1985).

Administrative Law – Interpretation of Law. Statute permitting a dwelling "customarily provided in conjunction with farm use" requires a showing that the dwelling will be sited on a parcel wholly devoted to farm use. *Matteo v. Polk County*, 14 Or LUBA 67 (1985).

Administrative Law – Interpretation of Law. LUBA will not read comprehensive plan and implementing ordinances to have retroactive effect without some provision in the plan and ordinances suggesting such a reading is required. *Warren v. Lane County*, 14 Or LUBA 36 (1985).

Administrative Law – Interpretation of Law. Zone change criterion requiring that proposed mining site be in closest proximity to utilization area is not impermissibly vague and does not require refinement before it can be applied in decision making process. *Panner v. Deschutes County*, 14 Or LUBA 1 (1985).

Administrative Law – Statutory Interpretation – Clinic. In the absence of a statement of reasons explaining why the facts found led the county to conclude that a sole practitioner's dental office constituted "a clinic" within the meaning of the county's ordinance, it could not be said that the county correctly applied its ordinance. *Theland v. Multnomah County*, 4 Or LUBA 284 (1981).

Administrative Law – Statutory Interpretation – Delegative Term. The court's function on review of an agency's refinement of delegative terms is to ascertain whether the refinement and application to specific facts falls within the generally expressed policy of the statute. *Theland v. Multnomah County*, 4 Or LUBA 284 (1981).

Administrative Law – Statutory Interpretation – Inexact Term – Findings. When dealing with an inexact term, the reasoning of the agency as to what a particular term means and why a particular set of facts falls within the "compass" of the term must, in a contested case proceeding, be set forth in the agency's order. *Theland v. Multnomah County*, 4 Or LUBA 284 (1981).

Administrative Law – Interpretation of Statutory Terms – Classes of Terms. The responsibility of a judicial or quasi-judicial body in the review of administrative decisions requiring interpretation of statutory terms hinges on whether the term is a "term of precise meaning," an "inexact term," or a "term of delegation." *Theland v. Multnomah County*, 4 Or LUBA 284 (1981).