

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a design guideline for a historic district in a city requires that exterior alterations and additions to historic resources "be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally * * * with the rest of the District," where the city council interprets the term "compatible" as not requiring uniformity, and where the petitioner has not demonstrated that that interpretation is inconsistent with the express language, purpose, or underlying policy that provides the basis for that design guideline, LUBA will uphold the city council's conclusion that two proposed new buildings meet the design guideline because they are similar to a historic resource on the same property, to adjacent properties, and to the historic district with respect to some design elements, even where they are dissimilar to adjacent properties with respect to other design elements. *NDNA v. City of Portland*, 80 Or LUBA 269 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county code provision allows "[p]arks, playgrounds, [and] community centers" in the Rural Residential (RR) zone, where the county code does not include a definition of "park," and where the board of county commissioners county relies upon the dictionary definition of "park" and the types of park uses recognized nationally and found in a nearby city park and in other county parks to conclude that the provision allows (1) year-round use of a portion of RR-zoned property for day camps, retreats, and environmental education programming for a maximum of 100 persons and a weeklong overnight camp serving youth, and (2) the use of another portion of the property "for small social gatherings of its members and guests of up to 500 persons in size for picnics, weddings, and memorials during the months of April through October weather permitting," LUBA will affirm the board of county commissioners' interpretation of the provision, even if a different interpretation might be better. *Klein v. Lane County*, 80 Or LUBA 287 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county code provision allows "campgrounds" in the Rural Residential (RR) zone but not "youth camps," and where the board of county commissioners relies on the

definition of “youth camp” elsewhere in the code to conclude that a “youth camp” must be a permanent use, LUBA will affirm the board of county commissioners’ interpretation of the provision to allow a weeklong youth overnight camp in the RR zone where the petitioners do not identify any provision of any statute or administrative rule with which the county’s interpretation is inconsistent or establish that the county’s interpretation is inconsistent with the express language of the county code or the underlying purpose of the RR zone. *Klein v. Lane County*, 80 Or LUBA 287 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the circumstances under which a local code provision applies are not clearly articulated in that provision or specified in any other local code provision, LUBA cannot say that an argument that the governing body misinterpreted that provision is one that “no reasonable lawyer would conclude * * * possessed legal merit” for purposes of awarding attorney fees under ORS 197.830(15)(b), even where the governing body’s interpretation was required to be affirmed under ORS 197.829(1). *Vannatta v. City of St. Helens*, 80 Or LUBA 1018 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A petitioner is not required to anticipate erroneous findings or interpretations in a final decision in order to challenge them at LUBA. Where petitioner raised an issue before the city council regarding fees and argued that the local appeal was invalid because of an allegedly invalid fee waiver decision, petitioner could not have anticipated the city’s decision along with its attendant findings and interpretations, until the city issued its final decision. Accordingly, petitioner did not have the opportunity to raise specific challenges to the city’s decision regarding the fee waiver during the local proceeding and therefore may raise them for the first time on appeal to LUBA. *Riverview Abbey Mausoleum Company v. City of Portland*, 79 Or LUBA 38 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city’s interpretation of its former version of a city code requirement that required that an appeal request include either the appeal fee or a fee waiver that had been approved by the planning director prior to the appeal deadline, and LUBA affirmed the city’s interpretation, but the city code has since been amended and the city’s code no longer requires a fee waiver be approved prior to the appeal deadline, and instead allows a local appellant to submit a fee waiver request and appeal request together, the city is not bound by its prior code, nor its interpretation of its prior code, and prior LUBA case law applying prior city code is no longer controlling. *Riverview Abbey Mausoleum Company v. City of Portland*, 79 Or LUBA 38 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Whether emergency access to the subject property is within the scope of an easement requires interpretation of the easement and is a matter of real estate law involving, among other things, a determination of the intent of the parties to the easement. Land use review bodies such as the city council are not particularly competent bodies to render interpretations of ambiguous terms in easements or deeds. Generally, a final and authoritative determination regarding the intent and scope of deeds, easements and similar real estate documents can be obtained only in circuit court, based on application of real estate law. *McNichols v. City of Canby*, 79 Or LUBA 139 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where an issue arises regarding compliance with an approval criterion that can be resolved only by interpretation of the ambiguous terms of an easement, the most problematic option for a local land use review body is to rely, without more, on its own interpretation of the ambiguous terms of an easement to determine compliance with the approval criterion. A less problematic option would be to impose conditions, at least as an alternative, intended to ensure that the legal uncertainty is resolved prior to final development approvals. The least problematic option is for the local government to interpret the terms of its approval criterion, if it can, to the effect that compliance can be determined regardless of how the ambiguous terms of the easement are interpreted or whether the dispute over the terms of the easement is resolved. *McNichols v. City of Canby*, 79 Or LUBA 139 (2019).

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

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

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the city code 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,” and excludes public and private streets, the city did not err in including in the net density acreage calculation parking drives designed primarily to provide vehicular circulation to parking spaces in the apartment complex for resident and visitor parking and a leasing office and maintenance building. *Hulme v. City of Eugene*, 79 Or LUBA 218 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a cross-petitioner seeks a remedy not available to it by statute, it is an obstacle to LUBA’s review of the cross-assignment of error. LUBA lacks authority to affirm in part, and reverse in part a local government’s approval of cross-petitioner’s project application. ORS 197.835(1). Even assuming that the city erred by applying Willamette Greenway standards to cross-petitioner’s housing project application, because they are not “clear and objective,” the city’s decision approving the development could not be reversed because it is not “prohibited as a matter of law.” If LUBA agreed with cross-petitioners, the correct disposition would be remand, except that remand was not requested and would have no effect on the city’s decision approving the application. In such a situation, LUBA will consider the request a contingent cross-assignment of error. *Hulme v. City of Eugene*, 79 Or LUBA 218 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Goal 15 guidelines and county code requirements that require to “the greatest possible degree, necessary and adequate public access will be provided along the Willamette River by appropriate legal means,” can be met where the city finds that current public access along the river provided by a public riverfront path is adequate, and the city does not err in construing the provision as requiring access only “along” the river instead of “to” the river. *Hulme v. City of Eugene*, 79 Or LUBA 218 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code provision prohibits the local government from approving an application for development if the property is “in violation of applicable land use regulations,” a local governing body’s interpretation that a decision that (1) determines only that existing development requires land use approvals, or (2) denies an application to approve existing development does not constitute a determination of a “violation” is not inconsistent with the express language, purpose, or policy of the code provision and is therefore entitled to deference under ORS 197.829(1)(a) to (c). *Bishop v. Deschutes County*, 79 Or LUBA 380 (2019).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the county approves an amendment to a planned development approval for a resort, golf course and aerial challenge course, and petitioner argues the county improperly construed the applicable provisions of the county’s code, but petitioner has not ultimately challenged the board of county commissioners’ interpretation, or otherwise explained why LUBA is not required to affirm that interpretation under ORS 197.829(1), petitioner has provided no basis for reversal or remand. *Carkulis v. Lincoln County*, 79 Or LUBA 610 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioner argues the county committed a procedural error that prejudiced his substantial rights when the board of county commissioners failed to consider a written statement that petitioner submitted to the board of commissioners at the hearing, but petitioner does not establish that the board of county commissioners actually failed to consider petitioner’s written statement, and petitioner failed to object to the alleged procedural error below, petitioner has not established that the county committed a procedural error or violated an applicable legal standard. *Carkulis v. Lincoln County*, 79 Or LUBA 610 (2019).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the county approved a proposed variance to the 20-acre minimum lot size for two one-acre parcels, pursuant to a county code provision that provides that the county planning director may approve a variance for a proposed project if the city does not object to the variance, LUBA will reverse the county’s decision as “prohibited as a matter of law” pursuant to OAR 661-010-0071(c) where the county approved the variance as “consistent with the * * * city’s comprehensive plan,” but the city objected to the proposed variance because of the proposal’s inconsistency with the city’s comprehensive plan. *City of Albany v. Linn County*, 78 Or LUBA 1 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reject a county’s interpretation of its code—that a code provision which sets forth approval criteria regarding an application for a variance to the minimum lot size requirements within the county’s urban growth area may not apply to the county’s decision because it only applies to decisions made by the county’s planning director but not to decisions made by the planning commission or board of county commissioners—that was made for the first time in its response brief, because that interpretation is not reflected in the decision and is therefore not an interpretation by the local government. *City of Albany v. Linn County*, 78 Or LUBA 1 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer does not misconstrue a development code requirement that a project applicant must demonstrate that environmental impacts have been “minimized to the extent practicable,” in finding that the project applicant is not required to propose a smaller sized dwelling. *McAndrew v. Washington County*, 78 Or LUBA 21 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Petitioners did not demonstrate that the county hearings officer erred where local county standards apply to development in “areas designated as floodways [as found on Federal Emergency Management Agency (FEMA) maps] or by methods described” elsewhere in the code, and the county hearings officer determined that because the development was not located within the “floodway,” those standards did not apply. This is so, even where petitioners argue the FEMA maps are inaccurate and another section of code authorizes the county floodplain administrator to determine where the floodway is currently located based on “actual field conditions,” but the county administrator has chosen not to exercise the authority granted in that section. *Meyer v. Jackson County*, 78 Or LUBA 150 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the county hearings officer agreed that the proposed project involved “the alteration of a watercourse” and that therefore standards applied which required the project applicant to show that the development “will not diminish the carrying capacity of a watercourse” by submitting “certification by an Oregon registered professional engineer,” that in the engineer’s opinion the watercourse “will not be diminished,” the applicant has met those requirements by submitting the certification by a licensed engineer, even though another section of the county’s code requires the applicant to “submit technical data” and a “Conditional Letter of Map Revision” from FEMA “when an alteration of a watercourse results in the expansion, relocation or elimination of the special flood hazard area [SFHA]” because the engineer certified that the project has not resulted in the expansion, relocation or elimination of the SFHA. *Meyer v. Jackson County*, 78 Or LUBA 150 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When comprehensive plan policies are not mandatory approval standards for a land use application, but the application must be evaluated for consistency with applicable plan policies, the evaluation may require some weighing and balancing of competing policy directions embodied in the applicable plan provisions. The local government’s evaluation, weighing and balancing of competing interests as well as ambiguous comprehensive plan provisions are entitled to a deferential standard of review under ORS 197.829(1)(a)–(c) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Yamhill Creek Solar, LLC v. Yamhill County*, 78 Or LUBA 245 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Although the county concedes it erred in denying a plan amendment and zone change application based on the belief that the subject property was, at the time the county made its decision, within a designated urban reserve area, when the LCDC’s urban reserve designation regarding the subject property had not actually become final at the time in question, LUBA will not remand the decision if the county’s decision identifies at least one valid basis for denial that is affirmed on appeal. *Stafford Investments, LP v. Clackamas County*, 78 Or LUBA 320 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county’s comprehensive plan policy provides that “areas” may be designated rural commercial when the areas (1) have a “historical commitment” to commercial uses, or (2) the “areas” are “located within an Unincorporated Community” and have “direct access to a road of at least collector classification,” petitioner has not demonstrated that the county commissioners’ findings regarding the meaning of “area” are inadequate or that the county’s reliance on a previous interpretation as authority for interpreting the term “areas” as used in rezoning criteria to refer only to the property being considered for rezoning, and not also to include the surrounding area, was in error where petitioner cites to no contextual differences suggesting that the term “areas” should be interpreted differently than the same term used in similar rezoning standards, or authority suggesting the county has an obligation to adopt specific findings regarding the parties’ alternative interpretations. *Stafford Investments, LP v. Clackamas County*, 78 Or LUBA 320 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will uphold a county’s interpretation of its own comprehensive plan policy regarding when a property may be designated rural commercial where the county evaluated the historic uses of the subject property and concluded that those uses did not demonstrate a “historical commitment to commercial uses,” after concluding that (1) temporary commercial uses, (2) incidental or accessory commercial uses to permitted residential or farm uses on the property, and (3) the current unlawful commercial uses on the property were not sufficient to demonstrate “historical commitment” of the property to commercial use, where the county chose to focus on “commitment” which the county understood to require an inquiry into the nature of the historic uses on the property and a determination of whether commercial uses have constrained the scope of the uses on the property such that going forward only commercial uses are feasible, rather than defining commitment in terms of years of commercial use. *Stafford Investments, LP v. Clackamas County*, 78 Or LUBA 320 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioner argues that the city erred by failing to apply a national historic trail master plan and national historic trail district guidelines to applicant’s proposed project, presenting evidence that the city “effectively” adopted the master plan by “endorsing” it during planning commission meetings over the years, the city’s “endorsement” does not amount to “adoption” of the plan and guidelines, nor does “incorporation by reference” transform an “ancillary” document into mandatory approval criteria. *Nicita v. City of Oregon City*, 78 Or LUBA 463 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s code interpretation of a county zoning ordinance that provides that a permit extension may be granted if the “approval criteria for the original decision found in a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance have not changed,” and the county board of commissioners interprets “have not changed” to mean an administrative or legislative amendment to the administratively enacted or codified law described in the same provision, and not include decisional law not that is not administratively enacted or codified, as long as such interpretation is “plausible.” *Hood River Valley Residents Comm. v. Hood River County*, 78 Or LUBA 478 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a LUBA decision merely “ascertain[ed] and declare[d]” what the laws at issue provided from the time of their enactment pursuant to ORS 174.010, such interpretative exercise cannot constitute a “change in the law.” *Hood River Valley Residents Comm. v. Hood River County*, 78 Or LUBA 478 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer’s interpretation is inadequate for review before LUBA where the hearings officer finds 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city governing body’s code interpretation where a prohibition on adjustment “[t]o allow an increase in density in the [low density residential] RL zone” does not specify what denominator should be used to determine whether a proposed adjustment increases the density in the RL zone, or explain how “density in the RL zone” is measured, and the city used as the denominator the gross acreage of a subdivision as a whole, rather than the acreage of individual properties. *Hunt v. City of the Dalles*, 78 Or LUBA 509 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The city’s comprehensive plan housing goal, Goal 10, and its policies and implementing measures, provide further contextual support for the city’s interpretation of its code regarding a prohibition on lot size adjustment “[t]o allow an increase in density in the [low density residential] RL zone” by using as the denominator the gross acreage of a subdivision as a whole, rather than the acreage of individual properties. One of the Goal 10 housing goals is to “[p]romote the efficient use of vacant land by encouraging infill development which is sensitive to existing neighborhoods, and by encouraging new development which achieves the density allowed by the comprehensive plan.” The city’s interpretation is consistent with Goal 10 and the policies and implementing measures because it interprets “density” and “acre” to allow new infill development of vacant land to achieve a density that is allowed by the comprehensive plan. *Hunt v. City of the Dalles*, 78 Or LUBA 509 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioner argues the city governing body’s finding regarding the applicability of a zoning ordinance was erroneous, and the city concedes the finding is erroneous, but when the error is not critical to the city council’s interpretation or ultimate conclusions, the error does not provide a basis for reversal or remand. *Hunt v. City of the Dalles*, 78 Or LUBA 509 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s interpretation of a comprehensive plan policy requiring that city parks be protected against incompatible uses, to mean that city parks will be

protected against approval of incompatible uses on adjoining lands, not that the city is also precluded from rezoning city parks to allow non-park uses of park lands, where the city council's narrower interpretation is not inconsistent with the express language, purpose and policy underlying the plan policy. *Crowley v. City of Hood River*, 77 Or LUBA 117 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That county staff have in the past approved recreational vehicles as permanent residential dwellings does not provide a basis to interpret the county code to allow recreational vehicles to be used as permanent residential dwellings, where the county code definition of “recreational vehicle” prohibits their use as permanent residential dwellings. *Oregon Coast Alliance v. Tillamook County*, 77 Or LUBA 192 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The question under *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010), is not whether petitioner's interpretation that a “street alignment and connections standard” and a “street connectivity standard” can be met by street extensions that terminate in a cul-de-sac is plausible. The question under *Siporen* is whether the city council's contrary interpretation that the standards require street extensions that connect with other streets on both ends is plausible, and the city council's interpretation is certainly plausible. *Martin v. City of Tigard*, 77 Or LUBA 288 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A decision that adopts a different position regarding *how* a street connectivity standard applies in a decision following a LUBA remand from the position adopted in the initial decision is not inconsistent with the holding in *Holland v. Cannon Beach*, 154 Or App 450, 962 P2d 701, *rev den*, 328 Or 115 (1998). In *Holland*, the Court of Appeals held a city erred by concluding in its initial decision that a slope and density standard had been repealed and therefore did not apply to a land division, and when its decision to deny the land division was remanded by LUBA, took the opposite position and applied the slope and density standard to deny the land division following remand. The change of position in *Holland* was a change of position in *whether* the standard applied, which is different from a change of position in *how* a standard applied. *Martin v. City of Tigard*, 77 Or LUBA 288 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city commission's interpretation of its code to permit the city to exercise its property rights under ORS 197.772(1) to refuse to consent to historic landmark designation separately from the city's grant of authority to the historic review board to consider and approve applications for historic landmark designations is plausible, and therefore must be affirmed under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 261, 243 P3d 776 (2010). Therefore, the historic review board must terminate consideration of a neighborhood association's application to designate city-owned property as a historic landmark when the city manager refuses to consent to the proposed historic landmark designation. *McLoughlin Neighborhood Association v. City of Oregon City*, 77 Or LUBA 377 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city commission's interpretation of a city manager's general authority to

exercise “supervision over all city property” to be broad enough to include authority for the city manager to refuse to consent to a proposed historic landmark designation for city-owned property is not reversible under ORS 197.835(9)(a)(D) (“[i]mproperly construed the applicable law”). *McLoughlin Neighborhood Association v. City of Oregon City*, 77 Or LUBA 377 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The ORS 197.772(2) right to refuse to consent to historic designation of property, which is given to “property owners,” is not limited to owners of private property. A city may refuse to consent to historic designation of city-owned property, where a neighborhood organization files an application to designate that city-owned property as an historic landmark. *McLoughlin Neighborhood Association v. City of Oregon City*, 77 Or LUBA 377 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local governing body commits no error in requesting that a prevailing party prepare written findings for it to adopt. And the governing body commits no error in adopting written findings that deviate from statements made at the final evidentiary hearing, and it is those written findings and not the oral statements that are subject to LUBA review on the merits. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Findings of fact and law are the decision; they are not evidence. A local governing body commits no error in adopting new findings following a LUBA remand for inadequate findings, without reopening the evidentiary record. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

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

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local governing body does not err by refusing to view the term “distribution plants and substations” as a technical term or term of art. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioners take the position that historic review and site plan review approval standards are so incompatible that site plan review entirely displaces historic review, but the city council’s interpretation of its code that both reviews are possible and that historic review may be completed before site plan review is plausible, LUBA must defer to the city council’s interpretation. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reverse a governing body’s interpretation that a large office complex providing offices for a number of local, regional, state and federal agencies is “accessory” to a small local fire station with a staff of four firefighters, where no reasonable person could conclude that the office complex is incidental and subordinate to the fire station, or subordinate in extent, area or purpose. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reverse a governing body’s interpretation that a 100-seat educational facility is “accessory” to a small local fire station with a staff of four firefighters, where even if it is presumed that the four firefighters sometimes take classes at the facility, no reasonable person could conclude that a 100-seat educational facility is incidental and subordinate to the fire station, or subordinate in extent, area or purpose. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of the code term “processing” (converting a natural mineral into a useful product) to include a facility that transforms natural gas into a liquefied form to more conveniently transport the gas to overseas markets aboard tanker ships, notwithstanding that after the liquefied natural gas reaches its destination it is returned to gaseous form, because in its intermediate liquid state the gas is a “useful product.” *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A finding that the mixed-use development that might be developed under a new plan map designation will be “near” a transit corridor is sufficient to demonstrate compliance with a plan policy to focus mixed-use development “along” transit corridors, where the city’s plan and land use regulations do not define either term and the term “along” is sufficiently subjective that the city’s implicit interpretation and application of the policy is not implausible under *Siporen v. City of Medford*, 349 Or 247, 249, 243 P3d 776 (2010). *Nicita v. City of Oregon City*, 75 Or LUBA 38 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where both the hearings officer and planning commission declined to address an argument regarding the standards and criteria that might apply to a hypothetical future building

permit application for approved housing, and where petitioner points to nothing in the local government's code that requires the hearings officer or planning commission to address petitioner's argument, LUBA will decline to issue what is in essence an advisory opinion regarding that argument. *Wiper v. City of Eugene*, 75 Or LUBA 109 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A County Court's interpretation of a comprehensive plan residential density standard that limits residential density in deer winter range to one dwelling unit per 160 acres to only consider nonfarm dwellings when computing density is not affirmable under ORS 197.829(1)(a) and *Siporen v. City of Medford*, 349 Or 247, 261, 243 P3d 776 (2010), where there is no textual support in the wildlife density standard itself for only counting nonfarm dwellings in computing density and the comprehensive plan policies the density limit was adopted to implement also do not support distinguishing between farm and nonfarm dwellings in computing density. *Central Oregon Landwatch v. Crook County*, 75 Or LUBA 186 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Deference under *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), and ORS 197.829(1) is only appropriate for interpretations that are adopted by the local governing body. Those interpretations include interpretations that are adopted initially by other bodies, so long as the local governing body adopts those interpretations of other bodies. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local governing body adopts a planning commission decision on appeal, interpretations adopted directly by the planning commission or adopted by incorporation by the planning commission are entitled to deference under *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), and ORS 197.829(1). *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a zoning ordinance lists general use categories for a particular zoning district, followed by a listing of particular uses under those general use categories, a local governing body's interpretation that adopts a broad dictionary definition of the use category "Utilities" and finds that a cell tower is a permitted use under that definition, when cell towers are not one of the two particular uses listed under the general category of Utilities, is not an interpretation that must be affirmed under ORS 197.829(1) and is not entitled to deference under *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a zoning ordinance separation standard applies to "buildings," defined in the zoning ordinance as "[a] structure built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind," a local government is within its interpretive discretion to interpret the separation standard not to apply to cell towers. Although cell towers are "structures," they are not "built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind." *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An interpretation of local law that is offered in a brief at LUBA, but was not adopted by the local government, is not entitled to deference under *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), and ORS 197.829(1). *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of its lot of record provisions, to the effect that consolidation of discrete parcels can be accomplished only by means of a county process resulting in county land use approval, and not by simply recording a deed, where that interpretation is not inconsistent with the express language, purpose or policy underlying the lot of record provision. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 328 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of its lot of record provisions, to the effect that “partitioning” (one of the ways in which a parcel can be created to qualify as a lot of record) includes units of land created as undescribed remainders of a parent parcel divided by deed, at a time when county approval was not required to create a parcel by deed, where that interpretation is plausible and not inconsistent with the text and context of the lot of record provision. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 328 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of the phrase “designated common area” as used in a plan policy governing a resort community zone to mean something different than a definition of “common area” in an unrelated section of the comprehensive plan that cross-references the definition of “common property” as used in the Oregon Planned Communities Act at ORS 94.550(7), where the latter definition was adopted at a different time and to serve a different purpose than the plan policy governing the resort community zone. *Kine v. Deschutes County*, 75 Or LUBA 407 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a comprehensive plan policy concerning sites “developed as a golf course” to apply to sites adjoining a fairway that were landscaped and used as a playable area in 2001 when the policy was adopted, because the interpretation is not inconsistent with the text of the policy. *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a comprehensive plan’s text limits application of a Rural Industrial plan map designation to three exception areas that were built or committed to rural industrial use before the county enacted planning and zoning, the county must first amend the comprehensive plan text to expand the eligible areas for the Rural Industrial plan map designation before applying that designation to properties that are not within the three exception areas. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 441 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. LUBA is not required to affirm a county’s interpretation of an exception to Goal 4 that is part of the county’s comprehensive plan, where that interpretation is contrary to the exception statutes at ORS 197.732, Goal 2, and the rule that implements Goal 2 at OAR 660-004-0018. ORS 197.829(1)(d). *Hood River Valley Residents v. Hood River County*, 75 Or LUBA 452 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county’s interpretation of an irrevocably committed exception as allowing all uses on the exception site that are allowed in the zone that was applied to the site when the exception was approved is inconsistent with the ORS 197.732(1)(b) description of an exception as “a comprehensive plan provision that * * * is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability.” *Hood River Valley Residents v. Hood River County*, 75 Or LUBA 452 (2017).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a code provision that implements the Transportation Planning Rule at OAR 660-012-0060 as applying only to an application for a comprehensive plan map amendment, and not applying to an application for planned unit development approval, even if the application for a comprehensive plan amendment is consolidated for review purposes with the PUD application, where that interpretation is not inconsistent with the express language of the provision. *Talbott v. City of Happy Valley*, 74 Or LUBA 143 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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 long 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA owes no deference to a governing body’s interpretation of a condition of approval imposed by a hearings officer in a prior decision, although deference may be required for any code interpretations the governing body adopts in the course of interpreting the condition of approval. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm an interpretation of a condition of approval requiring an “agreement” to maintain a common tract, such that the required agreement is not limited to Covenants, Conditions and Restrictions (CC&Rs), where the condition does not expressly limit the agreement to CC&Rs. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a code provision that requires a final plan that is submitted after approval of a concept plan for a planned unit development (PUD) to be “sufficiently detailed to indicate fully the ultimate operation and appearance of the development” to be satisfied by a submittal of plans providing detailed information about the location and size of building envelopes, dwelling heights, and the location of trees, utilities, the driveway, and the retaining wall, without requiring submission of plans and drawing regarding the appearance of the homes to be built on the PUD lots. *Harrison v. City of Cannon Beach*, 74 Or LUBA 202 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s implied interpretation of the phrase “in all major respects” as excluding changes that do not qualify as major changes, such as changes in setbacks. *Harrison v. City of Cannon Beach*, 74 Or LUBA 202 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a local code provision that provides for “final concept approval by the planning commission” to be sent to the city council as requiring that the city council make the final decision on the application whether the planning commission recommends approval or denial of the application, where the text of the provision and context provided by other provisions render the city council’s interpretation plausible. *Harrison v. City of Cannon Beach*, 74 Or LUBA 202 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a code provision as not requiring

a stage development schedule where a planned unit development is not proposed to be completed in stages and where the text of the provision and context provided by other provisions render the city council's interpretation plausible. *Harrison v. City of Cannon Beach*, 74 Or LUBA 202 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council's interpretation that the use category of mass shelter is limited to shelters located in a "building" is inconsistent with the express language of the applicable code provisions, where the code defines "mass shelter" in part as a "structure" containing sleeping areas, and as the code defines "structures," they are not limited to structures that are "buildings." *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council's interpretation that a mass shelter's sleeping areas must be located in permanent structures with foundations, and therefore a proposed tent camp that provides sleeping areas within large 10-person tents is not a mass shelter, is inconsistent with the code definition of mass shelter, which does not require that a mass shelter's sleeping areas be located in permanent structures with foundations. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council's interpretation that a proposed tent camp is not a "mass shelter" because the campers, rather than the tent camp operators, will provide sleeping pads is not consistent with the applicable text and definitions, which do not turn on who provides sleeping pads that shelter residents will sleep on. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is inconsistent with the purpose of a code prohibition on mass shelters in an industrial zone to approve, as an outright permitted "Community Service" use, a tent camp that is functionally identical to a mass shelter. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the city code excludes from the use category of "Community Service" any uses where tenancy is arranged on a month-to-month basis or longer period, a city errs in concluding that a proposed tent camp, which allows indefinite and potentially permanent tenancy by campers and staff, is a Community Service use allowed outright in an industrial zone. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is required to affirm a city council's interpretation of a code provision that requires adequate street size and capacity as allowing a short-term temporal separation between the opening of a proposed store and completion of mitigation measures that will address all deficiencies in an impacted off-site facility, where petitioners do not develop any argument that the interpretation is inconsistent with the express language of the regulation. *Martin v. City of Central Point*, 74 Or LUBA 312 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The larger size of a 5,000-square-foot structure in a forest zone is not determinative of whether it can be correctly viewed as “accessory” to a 3,600-square-foot residence. *Kaplowitz v. Lane County*, 74 Or LUBA 386 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Whether a proposed use is properly viewed as “accessory” to an existing residential use in a forest zone calls for a subjective judgment. Where a use began as an unauthorized use with a commercial component, and the commercial component is relocated to another site, a hearings official determines a number of limits imposed on the use are sufficient to ensure it is “accessory,” and the board of commissioners adopts the hearings official’s interpretation as its own, LUBA will defer to that interpretation under ORS 197.829(1). *Kaplowitz v. Lane County*, 74 Or LUBA 386 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reject a petitioner’s challenge that a city’s findings fail to demonstrate that allowing higher density residential development in an existing area of low density residential development, instead of in areas already planned for dense development, is consistent with a comprehensive plan policy encouraging compact development, where the petitioner fails to challenge the city council’s interpretation of the policy as encouraging compact development in all areas of the city, not just in areas most suitable for high density development. *Kine v. City of Bend*, 74 Or LUBA 403 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s findings that a site has “good access” to an arterial, because it is within a one-third-mile drive from an arterial and has direct pedestrian and bicycle access to the arterial, are sufficient to establish consistency with a comprehensive plan policy requiring “good access to an arterial,” particularly given the subjective nature of the policy. *Kine v. City of Bend*, 74 Or LUBA 403 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation of a comprehensive plan policy requiring that medium density residential development be located “near commercial services and employment” as being satisfied by a location near some commercial services and employment, but not necessarily a comprehensive range of commercial services and employment, is plausible and not reversible under ORS 197.829(1). *Kine v. City of Bend*, 74 Or LUBA 403 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That a county commissioners’ interpretation of a code variance standard is arguably inconsistent with language found on the county’s variance application form does not demonstrate that the commissioners’ interpretation is inconsistent with the express language, purpose or policy underlying the standard, under ORS 197.829(1). *Neil v. Columbia County*, 74 Or LUBA 442 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. A county is not bound to interpret its local variance standards in the same manner as traditional variance standards, and can plausibly interpret its “extraordinary hardship” standard to include considerations beyond the physical characteristics of the subject property. *Neil v. Columbia County*, 74 Or LUBA 442 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. How to determine whether a proposed zoning diagram is consistent with the comprehensive plan, based on trying to match surveyed lines to features depicted on the plan map, is a mixed question of law and fact, involving interpretation of the comprehensive plan map. LUBA owes no deference to a hearings officer’s interpretation of the comprehensive plan map, or the interpretative exercise of selecting which plan map features to match with surveyed lines. *Laurel Hill Valley Citizens v. City of Eugene*, 73 Or LUBA 140 (2016).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city governing body’s code interpretation to the effect that a vested right to complete what will be a nonconforming use is lost through discontinuance, if the applicant makes no effort toward completion of the use during a 12-month period, where that interpretation is consistent with the express language, purpose and policy underlying the code provision. *Wal-Mart Stores, Inc. v. City of Hood River*, 72 Or LUBA 1 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s interpretation of provisions of the city code’s planned development chapter to apply to a lot with portions that contain steep slopes that, under the city’s subdivision ordinance, make the lot developable at a lesser density than the zoning allows, where the city council’s interpretation of the planned development chapter is not inconsistent with one of the purposes of the planned development chapter to provide the city with flexibility to consider proposals that “cannot be obtained through traditional lot-by-lot subdivision,” and is not inconsistent with the express language of the planned development chapter. *Harrison v. City of Cannon Beach*, 72 Or LUBA 182 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council does not misconstrue a development code limitation that a temporary use permit may not “be issued for a period exceeding 180 days in any 365 day period” to require a single period of 180 days and not allow the holder of the permit to operate for up to 180 nonconsecutive days in any 365-day period. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation of a development code limitation that a temporary use permit may not “be issued for a period exceeding 180 days in any 365 day period” to require that the 180-day period begin on the date the permit is issued has the effect of omitting the “in any 365 day period” language and reading in a requirement that the start date for the 180 days must be the date the permit is issued. That interpretation is therefore inconsistent with the express language of the 180-day limit. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a county governing body’s interpretation of two provisions of the county’s zoning code that describe certain uses in similar, but not identical, terms as describing different uses, where the interpretation is not inconsistent with the express language of the two provisions. *Devin Oil Co., Inc. v. Morrow County*, 72 Or LUBA 240 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the county establishes that an applicable county code provision does not implement the Airport Planning Rule at OAR 660-013-0080, LUBA will affirm a county governing body’s interpretation of an undefined phrase “meeting place” in the applicable provision, where the interpretation is consistent with the plain ordinary meaning of the phrase and is not inconsistent with any of the express language of the county’s code. *Devin Oil Co., Inc. v. Morrow County*, 72 Or LUBA 240 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the relevant planning documents submitted to comply with the Goal 5 administrative rule requirement for an inventory of significant mineral and aggregate resource sites are all ambiguous, and none of those documents clearly states that they are an inventory of significant mineral and aggregate resource sites, a board of county commissioners’ interpretation that an inventory that was submitted for acknowledgment by LCDC showed both “significant” mineral and aggregate sites and mineral and aggregate sites for which there was not enough information to complete Goal 5 planning is not “inconsistent with the express language of the comprehensive plan,” and therefore is not reversible under ORS 197.829(1)(a). Where the other bases that would also authorize LUBA to reverse the interpretation set out in ORS 197.829(1)(b), (c), and (d) also do not apply, LUBA must affirm the interpretation. *Delta Property Company, LLC v. Lane County*, 72 Or LUBA 250 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a standard that permits the base zoning building height maximum to be increased if the “increased height is consistent with the purposes” of the applicable plan district’s height limits, but does not expressly require that the proposed height increase must be consistent with all of the purposes or that each of the purposes operates as an approval criterion, a city council interpretation that the proposed height increase does not have to be consistent with all the purposes and that the individual purposes do not apply separately as approval criteria does not insert or omit text from the zoning code, in contravention of ORS 174.010. *Preserve the Pearl, LLC v. City of Portland*, 72 Or LUBA 261 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city council explains that interpreting a standard that requires that a proposal to increase building height to be consistent with a list of purposes requires consistency with *all* of those purposes is not possible, which would render the plan designation that makes an area of the city eligible for such building height increases a nullity, that explanation provides contextual support for the city council’s interpretation that the proposed building height increase need only be consistent with the purposes on balance. *Preserve the Pearl, LLC v. City of Portland*, 72 Or LUBA 261 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where contextual requirements are written in terms of standards or criteria, all of which must be met, but the disputed standard merely requires that a proposed height increase be consistent with the purposes set out in the applicable height limit section of the code, that context supports the city’s interpretation that the proposed height increase need not be consistent with all of the purposes and that the purposes do not operate as individual approval criteria. *Preserve the Pearl, LLC v. City of Portland*, 72 Or LUBA 261 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation of the code-defined term “structure” as including a parking lot is not inconsistent with the definition of “structure” or the express language of the city’s land use regulations or comprehensive plan provisions. The use of the same word in the city’s buildings and construction code that is not a part of the city’s acknowledged land use regulations is not relevant context for determining whether the city improperly construed the word structure to include a parking lot. *Knapp v. City of Jacksonville*, 72 Or LUBA 299 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a code provision requiring notice to all parties to a land use proceeding that the members of the governing body intend to conduct a site visit “with any party or his representative,” as requiring notice only when the members of the governing body expect to conduct the site visit with a party, and not to require notice where a safety escort is unexpectedly provided during the site visit. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a potentially dispositive issue under a zoning code requirement that development be served by public facilities is whether a private septic system qualifies as “public facilities,” LUBA will reject arguments in respondent’s brief that the city council relied on a comprehensive plan definition of “public facilities” that might be broad enough to include private septic systems as public facilities, where nothing in the city council’s decision suggests the city council relied on the comprehensive plan definition. *Pennock v. City of Bandon*, 72 Or LUBA 379 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. For an implied interpretation of a local standard to be adequate for review, the findings embodying the interpretation must carry one possible meaning of the ambiguous language

in the standard, and an easily inferred explanation of that meaning. A finding that proposed rezoning to higher density residential use is consistent with a plan policy that requires “good access” to an arterial because the property is located near a minor arterial does not embody an implied interpretation adequate for review to the effect that “good access” is satisfied by physical proximity of the property to the arterial, regardless of the quality of access to that arterial. *Kine v. City of Bend*, 72 Or LUBA 423 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA’s review of planning commission interpretations is governed by ORS 197.835(9)(a)(D), rather than by ORS 197.829(1). And under ORS 197.835(9)(a)(D), LUBA must determine whether the planning commission “[i]mproperly construed the applicable law,” “without according the deference required by *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992).” *Gage v. City of Portland*, 319 Or 308, 317, 877 P2d 1187 (1994). *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under the law of the case principle articulated in *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), the parties in a LUBA appeal of a decision following LUBA’s remand of an earlier decision may not revisit legal issues that were resolved by LUBA in the prior appeal. Where the board of county commissioners could have reviewed the first decision and resolved interpretive issues differently than the hearings officer did in the first decision, but did not do so prior to the first LUBA appeal, the board of commissioners may not revisit resolved interpretive issues in the decision following remand and is not entitled to the deferential standard of review required by ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010) in the second appeal. *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. As a general proposition, a board of commissioners is free to interpret its land use regulations. But a hearings officer would not be free to interpret county land use regulations differently than LUBA did following a LUBA remand of the hearings officer’s initial decision, and the board of commissioners is also not free to do so in a local appeal of the hearings officer’s decision following LUBA’s remand. *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a board of commissioners’ interpretation of its comprehensive plan that an Airport Master Plan adopted as part of the comprehensive plan is not a source of approval criteria for proposed airport development, where that interpretation is not inconsistent with the express language of the provisions of the county’s development code that implement the Airport Master Plan or the county’s transportation system plan that describes the Airport Master Plan. *The Flight Shop, Inc. v. Deschutes County*, 71 Or LUBA 141 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a board of commissioners’ interpretation of the purpose statement for the county’s Airport Development Zone that refers to “consisten[cy] with” the airport master plan as merely reciting a conclusion that the zone is consistent with the airport master plan, and not requiring independent review of development in the zone for consistency with the airport

master plan. *The Flight Shop, Inc. v. Deschutes County*, 71 Or LUBA 141 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation that a code “Definition of Village Character” is not a mandatory permit approval standard, and that village character is achieved through compliance with substantive code standards that follow the definition, is consistent with the text and context of the code, where the code standards that follow the definition all state “village character” will be created or enhanced “by” or “through” “compliance with the following” “requirements,” “criteria” or “design standards.” *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A petitioner’s argument that a city’s code requires that proposed development be compared with the width and length of buildings on adjoining lots, in addition to height, to ensure the proposed development is “small scale” will be rejected where petitioner cites no code language that requires that the proposed development must be directly compared with adjoining development, petitioner cites nothing to support its contention that width and length must invariably be considered in addition to height, and the code is reasonably interpreted to achieve “village character” through standards set out in the code, rather than through a direct comparison of the proposed development with surrounding development. *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city interpretation of the phrase “seasonal resident seeking shelter” used in its comprehensive plan as including part-time, seasonal residents who are owners of single-family second homes, and not tourists seeking short-term vacation rental dwellings, where that interpretation is not inconsistent with the express language of the comprehensive plan, or the purpose or underlying policy of the provision. *Oregonians in Action v. City of Lincoln City*, 71 Or LUBA 234 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In applying a conditional use “compatibility” standard that requires consideration of the “operating characteristics of the use,” a local government does not err in considering the safety of the use. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where county zoning ordinance language replicates and was adopted to implement Goal 4 and LCDC’s Goal 4 administrative rule, the board of county commissioner’s interpretation of that zoning ordinance language is not entitled to deferential review under ORS 197.829(1) and is instead reviewed under ORS 197.835(9)(a)(D) to determine if the board of commissioners “improperly construed the applicable law.” *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A board of county commissioners’ interpretation of a zoning standard that requires that a proposed natural gas pipeline must “not limit the potential for more intensive use of the area” as being violated by the proposal unless the pipeline results in “no restrictions” on more intensive

uses is neither inconsistent with the text of the zoning standard nor implausible and therefore is not reversible under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 260-61, 243 P3d 776 (2010). *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A board of commissioners correctly interprets a zoning standard that requires that a “project’s” public benefits outweigh expected adverse impacts to (1) limit consideration to the pipeline for which county permit approval is sought and (2) exclude any public benefits that may be generated by the LNG terminal that would be located in, and require the separate approval of, a city located in the county. The permit applicant’s position that the county should consider the benefits of the LNG terminal but not the LNG terminal’s expected adverse impacts is incorrect, because “project” cannot mean one thing when considering benefits and something else when considering expected adverse impacts. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code provision requiring that a home occupation shall not utilize over 600 square feet of floor area cannot plausibly be interpreted to limit only the square feet physically occupied by a truck or trailer as part of a home occupation to perform maintenance work on trucks and trailers. Because the home occupation activity is the maintenance and not the storage of trucks and trailers, any interpretation that ignores the square footage necessary for employees to perform maintenance tasks is not consistent with the text of the code provision. *Stevens v. City of Island City*, 71 Or LUBA 275 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm as plausible a governing body’s interpretation of a code provision requiring a geologic assessment where development cannot be accomplished without measures to “mitigate or control” the risk of geologic hazard, to trigger the need for a geologic assessment only if the development activity itself causes the risk of geologic hazard to increase above its pre-development state, and to not require geologic assessment simply because the applicant proposes measures, such as planting vegetation, intended to reduce existing landslide risk below the pre-development state. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a code provision specifying the requirements for design and construction of transportation facilities as allowing the city to approve the creation of a public right-of-way by deed where the city council’s interpretation is not inconsistent with the text of the provision and relevant context provided by other provisions, and is plausible. *Truth in Site Coalition v. City of Bend*, 71 Or LUBA 348 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of the undefined term “project” as being limited to property that an applicant controls, notwithstanding evidence in the record demonstrating plans to develop more properties, where the city council’s interpretation is not inconsistent with the text of the provision, relevant context provided by other provisions, or the

purpose statement for the provision, and is plausible. *Truth in Site Coalition v. City of Bend*, 71 Or LUBA 348 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a code provision regulating when master planned development approval is required as not applying where no land division is proposed, and the interpretation is not inconsistent with the text of the provision. *Truth in Site Coalition v. City of Bend*, 71 Or LUBA 348 (2015).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a local government’s conclusion that an application to modify a condition of approval imposed in a prior decision does not propose dredging or filling, where no ground disturbing activity of any kind is proposed that differs from the ground disturbing activity approved in the prior decision. *McCaffree v. Coos County*, 70 Or LUBA 15 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s code interpretation to the effect that minimum frontage and floor-area-ratio standards apply to the collective structures of a proposed fueling station as a whole, including the canopy, paved area, and an exterior trellis wall, even though the standards do not easily apply to those structures viewed individually, where the petitioner fails to demonstrate that the city council’s interpretation is inconsistent with the express language, purpose or underlying policy of the code. *Save Downtown Canby v. City of Canby*, 70 Or LUBA 68 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county governing body’s unexplained decision to rely on the on-line Merriam-Webster Dictionary definition of the term “penstock” does not constitute an interpretation that is adequate for review, where the governing body’s decision does not show it was a considered choice between possible definitions. *Pacificorp v. Deschutes County*, 70 Or LUBA 89 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government approves an asphalt parking lot under a historic site review standard requiring that proposed development conform with the “character” of the historic district, LUBA will affirm the local government’s interpretation that an asphalt parking lot conforms to the character of the district, because asphalt is a common building material in the district, even if asphalt paving is not itself a described feature of the historic district. *Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a local governing body’s interpretation of its comprehensive plan as not requiring consistency review for individual quasi-judicial land use applications where the interpretation is not inconsistent with the express language of the comprehensive plan policy or any other provision of the comprehensive plan, or with any purpose or policy underlying the policy. *Hess v. City of Corvallis*, 70 Or LUBA 283 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm under ORS 197.829(1) a local governing body’s interpretation

of the term “areas” as synonymous with the property that is the subject of the rezoning application, where the interpretation is not inconsistent with any express language of the county’s comprehensive plan or land use regulations. *Ooten v. Clackamas County*, 70 Or LUBA 338 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government correctly construes its local code as not requiring an applicant for a plan amendment and zone change that would have the effect of legalizing some uses of the property to demonstrate compliance with code provisions governing nonconforming uses. *Ooten v. Clackamas County*, 70 Or LUBA 338 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s determination that a good faith effort to lease an historic building is sufficient to satisfy a historic resource demolition permit standard requiring the applicant to demonstrate a good faith effort to “sell” the resource, where the city’s findings explain that only the structure, and not the underlying land, is a designated historic resource, the city lacks authority to require the owner to sell the land, and the structure cannot be relocated intact. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city code limits the maximum number of parking spaces, and requires that parking must be provided on the same lot as the building served, or on an off-site lot within 500 feet of the building, a hearings officer misconstrues the code to allow parking spaces that are intended to serve hospital campus buildings that are located more than 500 feet away, under the theory that the various lots that make up the hospital campus constitute a single “lot” and the various buildings of the hospital campus a single development, where nothing in the code provides that the hospital campus is a single lot or constitutes a single development for off-street parking purposes. *SCAN v. City of Salem*, 70 Or LUBA 468 (2014).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer does not misconstrue a site plan review standard requiring a finding that “negative impacts to the transportation system are mitigated adequately” as not requiring the applicant to construct bike lanes that are shown in the Bicycle System Element of the city’s Transportation System Plan (TSP), where the code standard does not refer to the TSP or indicate that site plan review is the vehicle to provide for construction of bike lanes depicted in the TSP. *SCAN v. City of Salem*, 70 Or LUBA 468 (2014).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A comprehensive plan policy that requires the city to extend “key urban services and facilities in an orderly and efficient manner” is relevant context for interpreting a comprehensive plan provision that requires the local government to design and locate public and private facilities such as cellular communications towers in a manner that “preserves and enhances desirable features of local and neighborhood areas” and “promotes their sense of identity,” where

the two policies deal with the same subject matter. *Northgreen Property LLC v. City of Eugene*, 68 Or LUBA 76 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a staff code interpretation to the effect that a district-specific density transfer provision governing single-family development in single-family zones does not supersede or conflict with a general city-wide density transfer provision applicable to multi-family development in multi-family zones, where the two density transfer provisions would never apply to the same development, and therefore would not create incompatibility or conflict, such that the specific would control the general. *Sellwood-Moreland Improvement League v. City of Portland*, 68 Or LUBA 213 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a local government’s interpretation of the provisions of its comprehensive plan that implement Goal 17 to be as protective as, but not more protective than, Goal 17, where the text of the comprehensive plan provisions make clear that the local government did not intend to regulate coastal shorelands more protectively than Goal 17. *Oregon Coast Alliance v. Curry County*, 68 Or LUBA 233 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is required under ORS 197.829(1) to affirm a local government’s interpretation of a provision of its comprehensive plan that identifies the location of the coastal shorelands boundary as “the top of the seacliff along the seacliff shoreline” as a “general guide as to the location of the [boundary]” rather than a specific minimum elevation, where the interpretation is not inconsistent with the express language of the provision or the comprehensive plan map, and is plausible. *Oregon Coast Alliance v. Curry County*, 68 Or LUBA 233 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Goal 17 provides in part that coastal shorelands must include “adjacent areas of geologic instability where the geologic instability is related to or will impact a coastal water body[.]” In order to be consistent with Goal 17, a cliff erosion geologic hazard analysis that is relied on to determine the location of the coastal shorelands boundary must consider geologic instability from all causes of cliff erosion where the cliff erosion could impact the ocean. A geologic hazard analysis that does not analyze “adjacent areas of geologic instability” from causes of erosion other than waves hitting the shore cannot be relied on to locate the boundary consistent with Goal 17. *Oregon Coast Alliance v. Curry County*, 68 Or LUBA 233 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Goal 17 requires in part that coastal shorelands must include “lands within 100 feet of the ocean shore[.]” A county decision that locates the coastal shorelands boundary at the top of the beach and at the bottom or mid-point of shorefront cliffs is inconsistent with Goal 17, because such locations are arguably where the “ocean shore,” as defined in ORS 390.605(2), ends and that interpretation gives little or no depth to the coastal shorelands boundary beyond the “ocean shore” in some places. *Oregon Coast Alliance v. Curry County*, 68 Or LUBA 233 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. Where a local government interprets a land use regulation requirement for a geologic permit not to apply to an application for approval of a transportation impact analysis that does not propose any development, and that interpretation is consistent with the text of the land use regulation, LUBA is required to affirm the interpretation. *Oregon Coast Alliance v. City of Newport*, 68 Or LUBA 318 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a code standard requiring that a proposed facility is “consistent with the overall needs of the community” to also include consideration of impacts/benefits on citizens of adjoining cities, where that broad understanding of “community” is not inconsistent with the text, context, purpose or policy underlying the standard. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An argument that a city council misconstrued a “mitigate permanent disturbances” standard to apply only to disturbances to the surface of wetlands does not provide a basis for remand, where fairly read the city council findings apply the standard to evaluate disturbances to the soils and water column that constitute a wetland, and conclude that placing a pipe underground in the bedrock 34 to 60 feet below the wetland would not cause permanent disturbance to the wetland. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a code standard requiring mitigation of “permanent disturbances” to water resource areas, to require no mitigation when a proposed pipeline is laid across a culvert within the paved area of a street, and thus would result in no additional impacts on the water resource, where the interpretation is consistent with the text and apparent purpose of the standard to minimize impacts on water resource areas. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In approving a wedding venue and event business in a forest zone under a code provision that allows, on a “temporary” basis, uses otherwise not allowable in the applicable zone, a county must consider whether the proposed use is properly characterized as a “home occupation,” which is an allowed conditional use in the forest zone, subject to restrictions. If the proposed is properly characterized as a home occupation allowable in the forest zone, then the code does not allow the county to issue a temporary use permit for that use. *White v. Lane County*, 68 Or LUBA 423 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county errs in approving a five-year renewable permit for an existing wedding venue and event business as a “temporary” use, without considering whether the use is “temporary” as defined under the county code, *i.e.*, something that exists only for a limited, transitory interval, and whether conditions are necessary to limit the duration of the use to ensure that it is in fact a “temporary” use. *White v. Lane County*, 68 Or LUBA 423 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county errs in interpreting a code provision to allow temporary use of an “existing structure” even if the structure was recently and illegally built for a use prohibited in the zone, where the text and context of the temporary use provisions suggest that temporary use of an “existing structure” is intended for a lawful structure, and the county’s broader interpretation brings the code into conflict with nonconforming use statutes. *White v. Lane County*, 68 Or LUBA 423 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A decision that determines that ORS 215.301 does not prohibit batching operations at an existing mining site because a 1981 permit authorized batching operations on the subject property is not dicta, and a petitioner may challenge the conclusion in an appeal of the decision, where the decision purports to foreclose future challenges to a batching operation under the statute. *Poto v. Linn County*, 67 Or LUBA 162 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county has specific procedures for identifying and resolving development code violations and appeals from those procedures are to circuit court, LUBA will sustain a county’s interpretation that it is not obligated to review a decision by a county enforcement officer that a property is not in violation of the development code as part of a permit application for a home occupation on the property that was the subject of the enforcement officer’s decision. *Green v. Douglas County*, 67 Or LUBA 234 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When the governing body declines review of a planning commission decision, the planning commission’s interpretations can be imputed to the governing body only if the governing body affirmed, adopted or incorporated the planning commission’s decision as its own. *CRAW v. City of Warrenton*, 67 Or LUBA 263 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The intent to affirm, adopt or incorporate a planning commission’s decision as the governing body’s own decision must be expressly stated in the decision. Oral statements by individual members of the governing body indicating general approval of the planning commission decision are not a sufficient basis to input the interpretations of the planning commission to the governing body. *CRAW v. City of Warrenton*, 67 Or LUBA 263 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city staff interpretation that a site design review permit is not a “development permit” subject to certain submittal requirements because site design review does not directly

authorize any alteration of land is inconsistent with the applicable text and context, where under that interpretation none of the city's discretionary or nondiscretionary permits qualify as development permits, leaving the category of development permits an empty set. *CRAW v. City of Warrenton*, 67 Or LUBA 263 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code provision prohibiting the location of loading docks on a building side that faces the highway is not concerned with the orientation of the loading docks, but the orientation of the building side. The code provision is not met by a loading dock located against an L-shaped façade with the long axis facing the highway. *CRAW v. City of Warrenton*, 67 Or LUBA 263 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a county governing body's interpretation of standards governing placement of fill and levees in different areas of the flood plain as allowing fills and levees in the "flood fringe" area as long as the fill or levee does not increase the base flood level by one foot and does not extend from the "flood fringe" into the "floodway," which regulates fill and levees more stringently. *Protect Grand Island Farms v. Yamhill County*, 67 Or LUBA 278 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a rezoning standard originated in a city/county agreement but was later adopted as part of the city's comprehensive plan and land use regulations, the city's interpretation of that rezoning standard is entitled to deference under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Mintz v. City of Beaverton*, 67 Or LUBA 374 (2013).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Despite a reasonably strong textual and contextual argument in support of a different interpretation, a city's interpretation of the phrase "facilities operating at 1,000 watts [Effective Radiated Power] ERP or less" that ERP should be calculated by channel and not by antenna is not inconsistent with the express language of the city's regulation or with the purpose of the regulation, and is required to be affirmed, where the meaning of the key term used in the provision at issue, "facility," is not clear, is not defined in the code, and the dictionary definition of the word is not particularly helpful in discerning the intent of the city in enacting the provision. ORS 197.829(1)(a). *Hill v. City of Portland*, 66 Or LUBA 250 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body's interpretation of comprehensive plan

policies that “encourage” alternative energy sources, to allow the county to adopt restrictions on development of wind energy facilities to protect other uses, as long as such restrictions do not preclude the siting of wind energy facilities, because the interpretation is consistent with the text of the comprehensive plan policies. *Hatley v. Umatilla County*, 66 Or LUBA 265 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s interpretation of a standard requiring that the proposed road vacation be in the public interest, to the effect that “public interest” can include benefits flowing from development facilitated by the road vacation, not limited to the road vacation itself, where nothing in the text suggests limits on what considerations inform whether the vacation is in the public interest. *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a planning director’s interpretation that site design review standards do not apply to a proposed landfill expansion because the expansion was authorized in a 1980 decision that pre-dated the site design review standards, where nothing in the code compels application of the site design review standards to an already authorized landfill expansion. *McPhillips Farm Inc. v. Yamhill County*, 66 Or LUBA 355 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city planning commission interpretation that a comprehensive plan policy does not apply to a planned unit development application for a cell tower is correct where the text of the policy directs the city to implement one of several means of protecting open space, including adopting planned unit development ordinances, and does not contain any language that suggests that it is intended to apply on a case-by-case basis to individual applications for planned unit development approval that are processed under the city’s adopted planned unit development ordinances. *Northgreen Property LLC v. City of Eugene*, 65 Or LUBA 83 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city planning commission interpretation that a comprehensive plan policy does not apply to a planned unit development application to site a cell tower is not correct, where (1) the text of the policy provides specific and mandatory direction that public facilities “be designed and located” to “preserve[] and enhance” desirable features of the area, (2) the preamble to the applicable comprehensive plan policy refers to “daily decisions” being guided by “site planning,” and (3) there is no similar provision in the city’s development code that requires the city to consider whether the design and location of a public facility “preserve[s] and enhance[s] desirable features of the area.” *Northgreen Property LLC v. City of Eugene*, 65 Or LUBA 83 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city planning commission’s interpretation of a code provision that requires “adequate screening” as requiring screening of a 75-foot-tall cell tower to a reasonable extent and its conclusion that screening the bottom two thirds of a 75-foot-tall tower is sufficient to provide “adequate screening” are correct, given the inherently subjective nature of a criterion that requires “adequate screening.” *Northgreen Property LLC v. City of Eugene*, 65 Or LUBA 83 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. Where a proposed cell tower meets the objective standards set out in the city's code for telecommunications towers and where the tower will be screened from view while still allowing the tower to function as intended, LUBA will uphold a city's conclusion that the proposed cell tower is "reasonably compatible and harmonious" with the neighborhood, particularly given the inherently subjective nature of the criterion. *Northgreen Property LLC v. City of Eugene*, 65 Or LUBA 83 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That the county initially adopted a problematic interpretation of the criteria for applying a limited use overlay zone to limit uses allowed on land for which a reasons exception is taken does not provide a basis for reversal or remand, where the county adopted an alternative interpretation that is consistent with the text of the zone change criteria. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body's interpretation of a code standard allowing imposition of a limited use overlay zone if "it is required to limit the uses permitted in the proposed zone" by the reasons exception rule at OAR chapter 660, division 4, to employ the overlay zone to limit uses to ensure consistency with Statewide Planning Goal 12 (Transportation), and the need to take an exception to Goal 12, even though the county took reasons exceptions only to other statewide planning goals, where the county's interpretation is not inconsistent with the express language, purpose or underlying policy of the code standard. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body's interpretation of a local code provision to require only consideration of current adequacy of transportation facilities, notwithstanding local traffic analysis guidelines that require analysis of impacts from future planned uses, where the county interprets the guidelines to be non-mandatory, and that interpretation is not inconsistent with the express language, purpose or policy of the relevant local provisions. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Although city governing body interpretations are entitled to considerable deference under *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010), where there is no reviewable express or implied interpretation, LUBA has nothing to defer to. *Heitsch v. City of Salem*, 65 Or LUBA 187 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a zoning ordinance allows "Government Services" uses if they are not "specifically listed" uses in other zoning districts, a city council is within its interpretive discretion under *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010), when it concludes that a VA outpatient clinic is allowable as a Government Services use, notwithstanding that "Medical Health Facilities" are allowed in some city zones. Because the VA outpatient clinic would offer a variety of services some of which are not offered by the typical private and public clinics that would be allowed as "Medical Health Facilities," the VA outpatient clinic is not a "specifically

listed” use in any zoning district. *Randazzo v. City of Eugene*, 65 Or LUBA 272 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation of a code provision allowing rezoning when “zoning previously adopted for the area was in error” to focus on the parcel to be rezoned rather than the surrounding area is consistent with the text of the provision, and will be affirmed. *O’Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That a sub-area comprehensive plan map designates an area as “Medium and High Density” does not imply an intent to limit density below the maximum density otherwise allowed under the area’s general comprehensive plan map designation and zoning. *Conte v. City of Eugene*, 65 Or LUBA 326 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Sub-area plan language describing as a “buffer” the neighborhood that includes property proposed for rezoning from a high density residential to a higher density residential zone need not be interpreted to limit density to no more than the median density between the two zones. A planning commission does not err in concluding that the proposed rezone is consistent with the “buffer” description based on other density, height and design restrictions. *Conte v. City of Eugene*, 65 Or LUBA 326 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will not defer to an interpretation of a zoning ordinance that appears only in a city’s reply brief and is inconsistent with an implied interpretation that is included in the city council’s decision on appeal. *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 358 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the city council interprets a local code provision that requires the city to determine that the “[p]ublic benefits of the use outweigh any impacts that cannot be mitigated” as not requiring the city to determine whether there is a public need for the use, the city council’s interpretation is not inconsistent with the express language of the provision, and LUBA will affirm that interpretation. ORS 197.829(1); *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Cottonwood Capital Property Mgmt. LLC v. City of Portland*, 65 Or LUBA 370 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation that granting an adjustment to a requirement that vehicle access to mining and waste related uses be from Major City Traffic Streets to allow access from a Truck Access Street, because the adjustment “will equally or better meet the purpose of the regulation to be modified” is not reversible under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), where it is clear that the proposed access street has ample access to carrying the expected traffic and that therefore the adjustment meets the purposes of the regulation, to reduce impacts and nuisances and transportation impacts from mining and waste related uses. *Cottonwood Capital Property Mgmt. LLC v. City of Portland*, 65 Or LUBA 370 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Because the legislature in adopting ORS 197.829(1) both codified and modified the holding in *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), the legislature may have intended ORS 197.829(1) to be a comprehensive statement of the circumstances under which the *Clark* deferential standard of review is applied to a governing body’s local code interpretations, and did not intend LUBA to extend the reasoning in *Clark* to circumstances not covered by the statute, such as a governing body’s interpretation of the text of a prior land use decision adopted by the planning commission. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will sustain a city council interpretation of a 1991 planning commission site plan decision to approve both a 70,000-square-foot retail store and a 30,000-square-foot “future expansion” area, notwithstanding a condition that refers only to approval of the retail store, where the site plan depicts both improvements, the 1991 decision approves the “site plan” without restriction, and the record indicates that the planning commission intended to approve both improvements. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will sustain a city council interpretation of a site plan condition of approval to impose no limits on the type merchandise sold at a retail store that is allowed outright in the applicable zone, where the condition authorizes sale of “general merchandise, to include” listed examples, and the fairest reading of the condition is that the list of examples is illustrative, not exclusive. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a communication tower arguably qualifies as either a heavily regulated wireless communication facility or a lightly regulated utility, a local government interpretation that the tower qualifies as a utility is not inconsistent with the underlying policy of the land use regulation, where the land use regulation has two underlying policies—one that favors heavily regulating private wireless communication facilities and one that emphasizes health, safety and emergency functions of publicly owned utilities. *Thielemann v. City of Medford*, 64 Or LUBA 8 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a land use regulation provides that a Wireless Communication Support Structure is operated by a Wireless Communication Provider and defines a Wireless Communication Provider as “a person or company in the business of designing, installing, marketing and maintaining wireless communication systems and services,” a city correctly concludes that a police department communication tower is not a Wireless Communication Support Structure, because the police department uses the wireless communication system for its own purposes and does not provide wireless services. *Thielemann v. City of Medford*, 64 Or LUBA 8 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a zoning ordinance expressly excludes communication towers from zoning height limits but does not expressly exclude communication towers from zoning setback requirements, a city errs by interpreting the zoning ordinance to exclude communication towers from zoning setback requirements simply because the setback requirement is calculated based on the tower’s height. *Thielemann v. City of Medford*, 64 Or LUBA 8 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The underlying purpose of a setback requirement that increases by one-half foot for every foot a structure’s height exceeds 15 feet is to ensure that taller structures are set back farther than shorter structures. Interpreting an express zoning ordinance exemption for communication towers from building height limits to include an unexpressed exemption from the setback requirement is inconsistent with that underlying purpose. *Thielemann v. City of Medford*, 64 Or LUBA 8 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer incorrectly interprets a code standard that requires a proposed modification to an approved tentative planned unit development (PUD) to be “consistent with the conditions of the original approval” by determining that the proposed modification is consistent with modified versions of the original conditions of approval that were imposed in connection with a concurrent application for final PUD approval. *Willamette Oaks LLC v. City of Eugene*, 64 Or LUBA 24 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer incorrectly interprets a code standard that requires a proposal to modify an approved planned unit development (PUD) to demonstrate that the modification proposal is “consistent with the conditions of the original approval,” where nothing in the language of the code section allows the hearings officer to overlook inconsistency with the original approved PUD conditions simply because the modification proposes to eliminate the portion of the development that led to the conditions. *Willamette Oaks LLC v. City of Eugene*, 64 Or LUBA 24 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code standard for final planned unit development (PUD) approval that allows the city to “approve [a final PUD] with conditions” does not allow the city to overlook nonconformance with conditions of the Tentative PUD approval and approve a Final PUD that does not comply with the original Tentative PUD conditions of approval by conditioning that Final PUD approval on future satisfaction of those Tentative PUD conditions. *Willamette Oaks LLC v. City of Eugene*, 64 Or LUBA 24 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation of a planned unit development approval standard requiring that mixed-use development be “constructed before or concurrently with” commercial development, to the effect that the concurrency standard is satisfied by conditions that allow the commercial development to be completed and become operational regardless of whether

the mixed-use development is ever constructed, is inconsistent with the express language of the planned unit development standard. *Keep Keizer Livable v. City of Keizer*, 64 Or LUBA 53 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the plain purpose of a code standard requiring that mixed-use development be “constructed before or concurrently with” commercial development is to prevent circumstances where the constructed commercial development is in place without the required mixed-use development, a governing body’s interpretation that allows the commercial development to be constructed and operational without ensuring that the mixed-use development is ever constructed is inconsistent with the purpose of the code provision, and therefore that interpretation is reversible under ORS 197.829(1)(b), even if the interpretation is not inconsistent with the code standard’s express language. *Keep Keizer Livable v. City of Keizer*, 64 Or LUBA 53 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In analyzing a proposal for “compliance” or “consistency” with applicable criteria, ultimately the city must determine whether the proposal “satisfies” the applicable review criteria. *Boucot v. City of Corvallis*, 64 Or LUBA 131 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation of local variance standards is subject to deferential review under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), and the governing body is not bound to follow judicial precedent interpreting traditional variance standards, even if the local variance standards are similar or identical to traditional variance standards. *JCK Enterprises LLC v. City of Cottage Grove*, 64 Or LUBA 142 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a code variance standard providing that application of the standard to be varied “would result in practical difficulty * * * inconsistent with the objectives of this Code,” to the effect that the practical difficulty standard is met even if application of the standard to be varied would be inconsistent with only one relevant code objective, where nothing in the express language of the variance standard requires a determination of inconsistency with all or any particular number of code objectives. *JCK Enterprises LLC v. City of Cottage Grove*, 64 Or LUBA 142 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation of a code variance standard providing that application of the standard to be varied “would result in practical difficulty,” to the effect that the variance standard is satisfied if circumstances affecting the subject property make it extremely difficult to develop the property with the proposed use otherwise allowed in the zone, even if the property could be developed with other uses allowed in the zone without a variance, is consistent with the text and context of the variance standard and will be affirmed. *JCK Enterprises LLC v. City of Cottage Grove*, 64 Or LUBA 142 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. For purposes of ORS 197.829, LUBA must recognize as adequate for review a governing body’s implicit interpretation of a local approval standard, where the findings and decision carry with it only one possible meaning for the standard and an easily inferred explanation of that meaning. *Green v. Douglas County*, 245 Or App 430, 263 P3d 355 (2011). *Foland v. Jackson County*, 64 Or LUBA 265 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A finding that “public facilities exist that are adequate to serve” proposed development is not sufficient to embody a reviewable interpretation of a plan map amendment standard requiring that “adequate public facilities can be provided to the property,” where the findings fail to clarify whether the governing body understands the standard to be concerned only with the existence of public facilities in the area with adequate capacity, or whether the standard is also concerned with whether the public facility provider is willing and able to provide services to the property. *Foland v. Jackson County*, 64 Or LUBA 265 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under ORS 197.829(2), where the local government fails to interpret a local standard or adopt a reviewable interpretation, LUBA may interpret the standard in the first instance or remand the decision for the local government for an interpretation. Where the meaning of the local standard is “far from obvious” and the local government is in a better position than LUBA to clarify the meaning through interpretation of context and legislative history, LUBA should exercise its discretion to remand for an interpretation. *Green v. Douglas County*, 245 Or App 430, 263 P3d 355 (2011). *Foland v. Jackson County*, 64 Or LUBA 265 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer incorrectly interprets a code requirement that allows a “satellite building or station” to be sited in a residential district only if the satellite building or station will generate “no more trips than a residential use in the same district” to mean that the satellite building or station is allowed if it generates no more trips than the trips generated by the maximum number of detached residences possible under the property’s R-6 zoning. *Sarathy v. Washington County*, 64 Or LUBA 279 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer’s interpretation of the phrase “Willamette River” found in the portion of the city’s code that implements Statewide Planning Goal 15 (Willamette River Greenway) as meaning only the main channel of the Willamette River is inconsistent with the definition of “Willamette River” set out at ORS 390.310(3), which is referenced in Goal 15 and

which defines Willamette River to include all “channels” of the river. *Willamette Oaks LLC v. Lane County*, 64 Or LUBA 328 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation of its code to allow the setback distance from a wetland to be measured from the city’s Goal 5 maps is correct where the applicable language allows the setback to be measured from either the Goal 5 map or a wetland delineation that is provided by the property owner, where a wetland delineation is submitted by an applicant who is not a property owner and is later withdrawn. *Willamette Oaks LLC v. Lane County*, 64 Or LUBA 328 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s determination that second floor “apartments” above a ground floor commercial use in a commercial zone do not constitute “multi-family housing development,” even though the proposed apartments fit within the code definition of “multi-family housing development,” where other code definitions and provisions indicate that a second floor apartment/ground floor commercial use is treated as a distinct category of mixed-use development rather than multi-family housing development. *Poe v. City of Warrenton*, 64 Or LUBA 377 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s determination that a ground floor commercial mini-storage use is the “primary use” of a mixed-use structure, notwithstanding that second floor apartments and accessory ground floor garages constitute 75 percent of the building’s total floor area, where the code definition of “primary use” includes consideration of the “most substantial” or “important” element, and the city council adopts unchallenged findings that the commercial mini-storage use dominates the ground floor and the approach to the development. *Poe v. City of Warrenton*, 64 Or LUBA 377 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government decision maker considering an application to extend the term of a permit fails to apply local standards that apply to modifications of conditions of approval, based on findings that those standards only apply to modifications of conditions of approval, but the term of the permit is in part imposed by a condition of approval and the decision maker fails to address that fact, LUBA will remand. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a permit extension may be granted based on a finding that the failure to complete the proposal within the original term of the permit was “for reasons which the applicant was not responsible,” a board of county commissioners is within its discretion to interpret that standard to be met if a prudent developer would have delayed construction based on a funding shortfall. The county is also within its interpretive discretion not to require that the applicant explain why it could not have altered its decision to fund the project with donations or why it could not have reallocated other resources to construct the proposal. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. A local government’s interpretation of its code is incomplete and inadequate for review where the decision does not address or interpret key provisions of the code, including code definitions of key terms. *Poe v. City of Warrenton*, 63 Or LUBA 20 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a “public need and public benefit” standard not to require a weighing of the positive against the negative impacts of proposed mining, and instead to require only that there is a public need for and benefit from the additional supply of aggregate, where that interpretation is consistent with the express language of the code provision. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s interpretation of a local code provision governing appeals that determines that the consequence for underpayment of an appeal fee is not to dismiss the local appeal but rather to notify the appellant of the underpayment and request prompt payment of the remaining amount due is correct, where nothing in the applicable code section specifies that the consequence for an underpayment of an appeal fee based on misinformation from planning staff is dismissal of a local appeal. *Willamette Oaks LLC v. City of Eugene*, 63 Or LUBA 75 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation that a code phrase “passive use recreational facilities,” part of a wetland protection zone that generally prohibits development in wetland setback areas, includes trails and similar recreational facilities, and does not include developed recreational facilities such as an in-ground concrete swimming pool, is consistent with the text and context of the code provision. *Bundy v. City of West Linn*, 63 Or LUBA 113 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body does not err in concluding that an in-ground concrete swimming pool is a “structure” as that term is defined in the city code, because it has a “fixed connection” to the ground. *Bundy v. City of West Linn*, 63 Or LUBA 113 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code provision requires a proposed fueling center to be compatible with the “surrounding area,” but the phrase “surrounding area” is not defined in the local code, a local government’s interpretation of the phrase “surrounding area” as not requiring consideration of compatibility with a residential area located some distance away from the proposed fueling center must be affirmed under ORS 197.829(1)(a). *Leathers Oil Company v. City of Newberg*, 63 Or LUBA 176 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a proposed fueling center does not have a “primary pedestrian entrance” or any “large building surfaces,” a local government’s interpretation of its code provisions that regulate the design of the building features as in applicable to the proposed fueling center is required to be affirmed under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 258, 243 P2d 776 (2010). *Leathers Oil Company v. City of Newberg*, 63 Or LUBA 176 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer errs in determining that a local code provision that requires that each parcel created by a partition is “suitable for the use intended considering access” is satisfied by a demonstration of satisfaction with a separate code provision that requires each parcel to have “legal access” to a public road, where the two criteria pose different questions. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 288 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city setback reduction criterion requires the city to find that views of the ocean across a currently vacant lot will not be any more “obstructed” with a proposed front yard setback reduction than they would be without that setback reduction. Where it is the construction of the portion of the house that meets all setback requirements that almost entirely obstructs the view of the ocean, a city interpretation that any *de minimis* impact the proposed front yard setback might have on impaired view of the ocean that will remain through the small side yard does not amount to an “obstruction” is within the city’s interpretive discretion under ORS 197.829(1). *Burton v. City of Cannon Beach*, 63 Or LUBA 300 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a breeding kennel arguably qualifies as animal husbandry, and animal husbandry is a farm use, a local government interpretation that the breeding kennel qualifies as a farm use is not inconsistent with the express language, purpose and policy of the land use regulation. *Siebert v. Crook County*, 63 Or LUBA 379 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation of a local code provision that allows a multi-use path to be constructed in a riparian corridor area if it is “necessary to maintain a functional trail system” is not inconsistent with the express language of any relevant plan or local code provision where a comprehensive plan map depicts a multi-use path within the riparian corridor area, even though the map labels the trail as “conceptual.” *League of Women Voters v. City of Corvallis*, 63 Or LUBA 432 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government errs in denying an application for a use expressly allowed as a conditional use in the applicable zone on the grounds that the proposed conditional use is inconsistent with the purpose of the zone, where no code provision makes the zone purpose statement an applicable approval criterion, and the zone purpose statement includes no language suggesting that the purpose statement functions as a mandatory approval criterion for conditional uses allowed in the zone. *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reject a city council’s interpretation of a code provision allowing a property owner to site a recreational vehicle (RV) on the property for “temporary living purposes” to require that the RV be accessory to or in conjunction with a permanent dwelling on the property, where nothing in the applicable code provision expressly or impliedly requires a dwelling, and the city has expressly required, in other inapplicable code provisions, that an RV be an accessory use to or be in conjunction with a dwelling. *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. While a local government has latitude to identify applicable standards and criteria in its comprehensive plan and land use regulations, under ORS 227.173(1) the “standards and criteria” must already exist in the plan and ordinance, and the local government cannot manufacture standards and criteria to apply to approve or deny a permit application. *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer does not err in interpreting a code standard requiring historic design review for alterations to a building having exterior materials “specifically listed” in the city’s historic resource inventory not to require that contributing exterior materials be specifically described as contributing. If fairly read the text and context of the building description in the inventory indicates that a particular exterior material contributes to the building’s significance, then historic design review is required to alter that exterior material. *Carlton Development LLC v. City of Portland*, 62 Or LUBA 157 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That a city’s historic resource inventory lists a building’s “wood sash windows” in the “Description” paragraph rather than in the “Significance” paragraph does not mean that the windows are not contributing features, where in context it is clear that the inventory uses the description paragraph to list all contributing and noncontributing building features, and the significance paragraph is simply a summary conclusion based on the features listed in the description paragraph. *Carlton Development LLC v. City of Portland*, 62 Or LUBA 157 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer does not err in concluding that “wood sash windows” are specifically listed features contributing to a building’s historic significance, such that a historic design review permit is required to replace the windows with vinyl windows, where the city’s inventory concludes that the building is a “contributing” resource based on the features listed in the building description, including the original wood sash windows. *Carlton Development LLC v. City of Portland*, 62 Or LUBA 157 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of the use category “retail and wholesale trade facilities” to include a travel plaza that sells fuel, convenience items and food to travelers, where the proposed use fits within the plain and ordinary meaning of the use category’s broad terms, and nothing in the text or context narrows the scope of the use category. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An allegedly erroneous and overbroad code interpretation that all commercial uses allowed in any commercial zone are allowed under the use category “retail and wholesale trade facilities” in an airport overlay zone does not warrant reversal or remand, where the interpretative error, if any, does not undermine the governing body’s principal interpretation that the proposed travel plaza is a “retail and wholesale trade facility.” *Devin Oil Co., Inc. v. Morrow County*, 62 Or

LUBA 247 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reverse under ORS 197.829(1) a governing body’s interpretation that a Limited Use overlay zone is applied to limit uses in exception areas only when the applicant requests it, and that instead conditions of approval can be applied to limit uses, when (1) the Limited Use overlay zone is expressly intended for that purpose, (2) nothing in the code suggests an alternative mechanism to limit uses or authorizes attaching conditions of approval to limit uses in exception areas, and (3) under the county’s interpretation and the criteria that govern designation of the overlay zone there are no circumstances under which the overlay zone could be applied. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local governing body interprets its zoning ordinance to conclude that either one of two provisions could apply to an application for a dwelling in a forest zone and that the applicant for the dwelling may choose to have the application evaluated under one or the other provision, LUBA will affirm that interpretation where that interpretation is not inconsistent with the text, context or purpose of the underlying provisions. *Bardolf v. Yamhill County*, 62 Or LUBA 321 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a county governing body’s interpretation that an application to change the comprehensive plan map designation for property to Rural Use is not by itself a request for a right to develop more than one residence on the property and therefore need not be concurrently accompanied by a RU zone change application, when that interpretation is consistent with the express language of the provision. *City of Jacksonville v. Jackson County*, 62 Or LUBA 439 (2011).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The requirement that a dwelling sought to be replaced be a “building * * * which is occupied in whole or in part” does not include a requirement for continuous occupancy. *Dalton v. Polk County*, 61 Or LUBA 27 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When a replacement dwelling approval standard requires that the dwelling sought to be replaced have been “lawfully constructed,” if there is a final unappealed decision that removed a use restriction from a lawfully established dwelling, the fact that that decision may have been incorrect does not change the fact that dwelling was legally established and may be replaced. *Dalton v. Polk County*, 61 Or LUBA 27 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a proposed replacement dwelling is in a forest zone rather than an EFU-zone, case law regarding the interpretation of “intact” for purposes of establishing that a dwelling sought to be replaced has “intact exterior walls” is not binding on the local government. *Dalton v. Polk County*, 61 Or LUBA 27 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council’s implicit interpretation of a comprehensive plan requirement that amendments affecting less than five “separately owned tax lots” be processed as a minor plan amendment to mean lots or parcels owned by different persons, and reject petitioner’s contrary interpretation that “separately owned” means lots or parcels potentially conveyable to different persons, where petitioner does not challenge the city council’s interpretation or explain why it is reversible under ORS 197.829(1). *Smith v. City of Salem*, 61 Or LUBA 87 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When deciding whether development is “small to moderate in scale” under one element of a comprehensive plan, a local government may consider language from another comprehensive plan element as context in determining that development of less than 100 acres is “small to moderate in scale.” *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 96 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When determining what constitutes “development activity” in a subarea identified in the comprehensive plan, where the subarea provides for water dependent development, and the local government included inwater structures in its calculation of development acreage, dredging within those waters must be considered “development activity” in the subarea. *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 96 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When a local comprehensive plan provision that implements Goal 16 requires the local government to “protect” a resource, any development allowed is not consistent with the Goal 16 definition of “protect” unless there is at most a *de minimis* or insignificant impact on the resource that the provision requires to be protected. *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 96 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A comprehensive plan provision that implements Goal 16 and requires the local government to “protect” wildlife habitat within an estuary may be satisfied through off-site mitigation within the Goal 16 definition of “protect” if such mitigation results in no net loss to the protected habitat within the estuary, even if there is an impact at the development site. *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 96 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When building height requirements are measured from the “ground surface” within five feet of an exterior wall, a local government does not misconstrue the applicable law by interpreting “ground surface” to include the finished ground surface that is altered and raised during construction. *Concordia Neighborhood Association v. City of Portland*, 61 Or LUBA 143 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A requirement that mining “not be allowed closer than one-quarter mile from any noise or dust sensitive use” is properly interpreted to impose a minimum setback, leaving the applicant to select the mining site so long as the site selected is at least one-quarter mile from any

noise or dust sensitive use. Any attempt by the local government to interpret the standard to allow it unbridled discretion to enlarge the one-quarter-mile setback would likely run afoul of the ORS 215.416(8)(a) requirement that permit applications be approved or denied based on “standards.” *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a zoning ordinance requires a mining permit applicant to demonstrate that a proposed mining operation can meet certain state standards and a state standard prohibits mining “without taking reasonable precautions to prevent particulate matter from becoming airborne,” and a local government interprets that state standard to require that the applicant successfully prevent all particulate matter from becoming airborne, the local government erroneously interprets the state standard. The state standard only requires that the applicant take reasonable precautions; it does not require the elimination of all airborne particulate matter. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The hearings officer correctly interprets a code standard allowing modifications to a conditional use permit that result in “insignificant changes” in the physical appearance of development, use of the site, or impact on surrounding properties to be concerned with modifications that change the proposed development, not a modification to a deadline to complete the development as originally approved. *Connecting Eugene v. City of Eugene*, 61 Or LUBA 439 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The more deferential standard of review set out at ORS 197.829(1) applies to interpretations by local government governing bodies. The deferential standard of review set out at ORS 197.829(1) does not apply to interpretations by other local decision makers, such as hearings officers, and LUBA reviews such interpretations under ORS 197.835(9)(a)(D) to determine whether the hearings officer “[i]mproperly construed the applicable law.” *Waverly Landing Condo. Owners’ Assoc. v. City of Portland*, 61 Or LUBA 448 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Although a local code provision that requires an application to be reviewed for “consistency” with a variety of code requirements may not involve the same analysis that would be necessary if the code provision required the application to “comply” with explicit and easily measurable setback or height requirements, a local government misconstrues the applicable law in finding that it may ignore the “consistency” review unless an application also seeks a variation. *Hoskinson v. City of Corvallis*, 60 Or LUBA 93 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s interpretation that a “common green” is a “full street” under a code provision that allows a reduction in density requirements where a “full street” is created is correct, where the code defines “common green” as a type of street, and does not include a definition for “full street.” *Meade v. City of Portland*, 60 Or LUBA 265 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. Where the local government did not adopt a reviewable interpretation of its erosion control ordinance to explain why the local government believes the erosion control ordinance applies to applications for preliminary subdivision approval, and it appears that the text of the erosion control ordinance could plausibly be interpreted to apply or not to apply to such decisions, remand is appropriate for the local government to interpret the erosion control ordinance in the first instance. *Montgomery v. City of Dunes City*, 60 Or LUBA 274 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When the local code requires a finding that a new parcel be suited for the “intended or offered” use, and the code requires a partition applicant to identify the intended use, a local government’s interpretation that a finding of suitability is required only when the partition applicant files a concurrent permit application seeking approval of a specific use is not consistent with the text and context of the partition code. *Devin Oil Co., Inc. v. Morrow County*, 60 Or LUBA 336 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When a local code provision requires that a partition application demonstrate that “all required public service and facilities are available and adequate,” the local government does not misinterpret that provision to apply only to services and facilities provided by third parties that serve more than one property, and not to apply to facilities provided on-site by the landowners to serve only the subject property. *Devin Oil Co., Inc. v. Morrow County*, 60 Or LUBA 336 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Context includes previous versions of an ordinance. Where the previous comprehensive plan expressly permitted nonresource land to be designated Rural Residential, but

subsequent plan amendments (1) eliminated that language and replaced it with language restricting the Rural Residential designation to lands subject to an exception to Goals 3 or 4, and (2) adopted a Rural Use designation limited to nonresource lands that do not require an exception, that context suggests that the county intended to restrict the Rural Residential designation to resource lands which require a goal exception, and exclusively employ the Rural Use designation for nonresource lands that do not require a goal exception. *Rogue Advocates v. Jackson County*, 60 Or LUBA 392 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county’s Rural Residential plan designation implements OAR 660-004-0040, which applies exclusively to rural residential areas that are subject to Goal 3 or 4 exceptions, and expressly does not apply to nonresource lands not subject to those goals, it is reasonable to presume that the Rural Residential designation also applies exclusively to resource lands for which a Goal 3 or 4 exception is taken, and is not intended to apply to nonresource lands. *Rogue Advocates v. Jackson County*, 60 Or LUBA 392 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. As part of a text and context analysis, LUBA may consider any local legislative history in the record for purposes of understanding the intent in adopting the text and context being considered. *Rogue Advocates v. Jackson County*, 60 Or LUBA 392 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reverse a governing body’s interpretation of an ambiguous plan provision, the text of which can be read to allow nonresource lands to be redesignated Rural Residential, where that interpretation is inconsistent with the text, context, purpose and underlying policy of the plan provision, and contrary to an administrative rule that the plan provision implements. *Rogue Advocates v. Jackson County*, 60 Or LUBA 392 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Because a comprehensive plan is made up of both text and maps, LUBA’s deferential standard of review set out at ORS 197.829(1) applies to local government interpretations of plan maps as well as local government interpretations of plan text. *Oregon Shores Cons. Coalition v. Curry County*, 60 Or LUBA 415 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a composite map that is produced by enlarging a small scale comprehensive plan estuary map and applying it to a larger scale tax lot specific map has a fairly significant margin of error, it is plausible to interpret the small scale comprehensive plan estuary map to (1) include an entire small tax lot in a natural management unit, (2) exclude the entire small tax lot in a natural management unit or (3) place the small tax lot partially in a natural management unit and partially in a conservation management unit. In that circumstance, no further explanation is required for the local government’s choice among the three plausible interpretations. *Oregon Shores Cons. Coalition v. Curry County*, 60 Or LUBA 415 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a comprehensive plan generally describes the resources that were to be

protected by designating a natural estuary management unit on a small scale comprehensive plan map in 1981, a petitioner fails to show the local government's failure to interpret the comprehensive plan to include a small tax lot in the natural management unit is inconsistent with the "purpose" or "underlying" policy of the plan, within the meaning of ORS 197.829(1)(b) and (c), where, under the local government's interpretation, the natural estuary management unit still includes all of the resources that the comprehensive plan identified as justifying the natural estuary management unit in 1981. *Oregon Shores Cons. Coalition v. Curry County*, 60 Or LUBA 415 (2010).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioners assign error to a local government construction of applicable local land use law, the question for LUBA is whether the local government's interpretation must be sustained under ORS 197.829(1), not whether petitioners' interpretation is sustainable or a better interpretation than the local government's interpretation. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will not affirm a local governing body's interpretation of a code provision prohibiting development from disturbing more than 5,000 square feet to exempt areas temporarily disturbed during construction where that interpretation is inconsistent with the text of the code provision and context provided by the defined term "development," and policies and purposes of the development code. *Horsey v. City of West Linn*, 59 Or LUBA 185 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where no new roads or intersections are proposed as part of a partition, a hearings officer errs in interpreting a comprehensive plan policy that requires development to be served by adequate roadway facilities to require a showing of compliance with local ordinance criteria and road design standards that apply only to new roads and intersections. *Pelz v. Clackamas County*, 59 Or LUBA 219 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a local governing body's interpretation of a code provision that a modification of a detailed development plan necessarily extends the effective period of an approval of that detailed development plan, where that interpretation is consistent with the text and purpose of the provision. *Knapp v. City of Corvallis*, 59 Or LUBA 285 (2009).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city errs by approving a variance to subdivision standards under its general

zoning variance criteria, where a separate city ordinance provides variance standards for subdivisions, and the city’s decision offers no reviewable interpretation or explanation why the subdivision variance standards do not apply. *Holbrook v. City of Rockaway Beach*, 58 Or LUBA 179 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When the local code defines “building” as a “structure built for the support, shelter, or enclosure of persons, animals, chattel, or property of any kind,” the local government does not exceed its discretion under ORS 197.829(1) in finding that utility power poles are not buildings and thus not subject to building height restrictions. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When a local code establishes a hierarchical framework for terms that are not defined by the code, the local government must adhere to that framework, and not skip to the last source in the framework when a definition is provided by an earlier listed source. Using a lower hierarchy dictionary definition of “protect” that means to *attempt* to preserve a resource instead of a hierarchically superior OAR definition of “protect” that means to *actually* preserve a resource misinterprets the applicable law. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government misinterprets the applicable law by finding that a liquefied natural gas facility is “small or moderate” in scale just because it encompasses less than 100 acres and needs less than 20 acres of fill. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a code provision that authorizes uses in a zone that are similar to listed uses, to allow a proposed use that is similar to a listed use, even if the proposed use is specifically listed in another zone, where the governing body’s interpretation gives independent effect to that code provision and is consistent with its text and context. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county’s code includes not one but two separate provisions authorizing uses that are not listed as permitted uses in that zone, or listed anywhere as a permitted use in any zone, if the use is “similar to” uses permitted in the zone, it is clear that the county is not concerned with maintaining bright lines between use categories, and the county does not err in approving a “truck stop” as a similar use to an “automobile service station,” even though the applicable zone does not list truck stops as a permitted use while other zones in the county do. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city governing body does not err in interpreting comprehensive plan policies that govern “development” to be inapplicable to a proposal to annex and extend sewer service to

fully developed property. *Link v. City of Florence*, 58 Or LUBA 348 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a local governing body’s interpretation of a code provision allowing development approval to be extended for two years if “conditions have not changed” to require denial of the requested extension only if the changed conditions would have resulted in denial of the original application, and that interpretation is consistent with the text and purpose of the code provision. *Oregon Shores Cons. Coalition v. City of Brookings*, 58 Or LUBA 421 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county does not err in interpreting a comprehensive plan policy requiring that airports be compatible with surrounding uses to be satisfied by incorporated findings addressing conditional use permit standards that, the county found, ensure that the airport is compatible with surrounding uses. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a comprehensive plan policy that requires that development shall comply with “applicable” Department of Environmental Quality (DEQ) standards to not require that the applicant demonstrate that a proposed personal use airport will comply with a DEQ noise program that DEQ has suspended. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county does not err in concluding that the county’s noise ordinance is not a conditional use approval standard for a personal use airport, where the noise ordinance is not part of the county’s zoning regulations, the noise ordinance functions as a performance standard rather than an approval standard, and the noise ordinance includes an exclusion for noises generated by approved conditional uses. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation of conditional use criteria in its code as containing a categorical exemption for certain public utility facilities is not inconsistent with other applicable conditional use criteria or the provisions of the relevant zoning overlay district and is not reversible under ORS 197.829(1). *Paddock v. City of Lafayette*, 58 Or LUBA 498 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Absent code language to the contrary, a county does not err in finding that regulations governing a particular zoning district apply only to land located within that district, and not to uses proposed on land adjacent to the district. *Crockett v. Curry County*, 58 Or LUBA 520 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a code provision requiring that a proposed use that is “inconsistent” with the transportation plan must be processed as a plan amendment, to require only that the county determine whether the proposed use is in conflict with any transportation plan policy, and not to require that the county find that the proposed use is

specifically authorized by the transportation plan. *Crockett v. Curry County*, 58 Or LUBA 520 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When an approval criterion requires a partition map to show “other features affecting development,” a local government does not misinterpret the applicable law by requiring an applicant to show areas designated as less and least suitable by the comprehensive plan. “Other features affecting development” can encompass physical features themselves as well as comprehensive plan designations based on those features. *Sperber v. Coos County*, 58 Or LUBA 570 (2009).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a code provision allowing second-floor residential use of a commercial building if “accessory to an active commercial use,” to permit residential use by persons who are not owners or employees of the commercial use, where the code defines an accessory use as one that is “incidental and subordinate,” rather than related to or associated with. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the relevant code provisions impose smaller building size limits on outright permitted commercial uses than conditionally permitted commercial uses, LUBA will affirm a governing body’s interpretation that a 4,353-square-foot structure housing both outright permitted and conditionally permitted commercial uses is not subject to the 4,000-square-foot limit on outright permitted commercial uses. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county does not err in interpreting a planned development standard requiring that at least 50 percent of the development be open space “retained for common use by owners and residents of the development” to refer to both commonly owned open space and privately owned open space. *Saddle Butte Residents’ Association v. Douglas County*, 56 Or LUBA 269 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government interpretation that construes a local code requirement for open space that requires either “open space” or “outdoor recreation area” in a manner that requires both open space and outdoor recreation area is not entitled to deference under ORS 197.829(1). *Bridge Street Partners v. City of Lafayette*, 56 Or LUBA 387 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city is not required to interpret traditional variance language (“practical difficulty or unnecessary hardship”) in accordance with the traditional strict meaning of that language, particularly when that language is not used as part of the city’s variance code but instead was borrowed from the variance context to be used as a test for expanding nonconforming uses. *Azore Enterprises, LLC v. City of Hillsboro*, 56 Or LUBA 422 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. LUBA will affirm a governing body's interpretation that a code provision requiring that private wells be shown to meet certain bacteriological quality standards does not also require a showing of sufficient quantity, where the code provision does not mention water quantity and other code standards appear to govern water quantity. *Gardener v. Marion County*, 56 Or LUBA 583 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When a local code allows exceptions when there is a “demonstrable difficulty” in meeting the applicable approval standard, a finding that meeting the approval standard would produce little benefit, even if true, does not establish that there is a “demonstrable difficulty” in meeting the standard. *Bullock v. City of Ashland*, 56 Or LUBA 677 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government's interpretation of the meaning of various street classifications that are defined in its comprehensive plan is not inconsistent with the express language of the plan provision. *Lufkin v. City of Salem*, 56 Or LUBA 719 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The county's interpretation of a provision of its local code that allows the county to waive appeal fees for certain neighborhood groups is not inconsistent with the express provisions of its local code or other applicable ordinances under ORS 197.829(1). *Ratzlaff v. Polk County*, 56 Or LUBA 740 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation that allowing family and social guests to stay in two recreational vehicles parked on a lot adjoining the property owner's dwelling does not constitute a “recreational vehicle park” as that term is defined in the code, because it is not open to the “general public.” *Fessler v. City of Fossil*, 55 Or LUBA 1 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council's interpretation of a planned unit development standard authorizing septic tanks for individual lots where it is “impractical” to connect the development to the city sewer system, to govern only circumstances requiring permanent septic tank installations, not temporary septic tanks to be used until the city system is upgraded, followed by mandatory connection to the city system. *Coquille Citizens for Resp. Growth v. City of Coquille*, 55 Or LUBA 155 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council interpretation of the code term “access” to include a driveway is not inconsistent with the text, context, purpose or policy of that term. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of a code provision providing minimum performance standards for “streets” to include unsignalized intersections. *Vista Construction LLC v. City of Grants Pass*, 55 Or LUBA 590 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Petitioner fails to demonstrate that the city erred in evaluating the performance of an intersection by measuring delays associated with each directional approach rather than the entire intersection, particularly when petitioner’s own expert used the same method to evaluate intersection performance. *Vista Construction LLC v. City of Grants Pass*, 55 Or LUBA 590 (2008).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Absent a local regulation that requires otherwise, it is permissible to locate an accessory parking lot on land that is zoned differently than the land on which the primary use the parking lot serves is located. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer’s interpretation of the phrase “mechanical means” as applying to technology using light emitting diodes in electronic signs is correct. *Lamar Advertising Company v. City of Eugene*, 54 Or LUBA 295 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA’s standard of review of county counsel’s interpretation of a local zoning code provision is whether that interpretation is correct. *Love v. Klamath County*, 54 Or LUBA 410 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation that the use category of “truck sales, service, storage and maintenance” includes dispensing of fuel to trucks, notwithstanding that the code includes a different use category of “truck stop” that expressly permits dispensing fuel, where other context indicates that the county intended truck “service” to include dispensing fuel. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code includes specific conditional use standards for a particular use category that is a permitted use in some zones and a conditional use in other zones, LUBA will affirm the local government’s interpretation that the conditional use standards do not apply to that use if it is proposed in a zone where it is a permitted use. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reject a local government’s interpretation of an ordinance recital stating that “[a]t such time as a development agreement is executed” the comprehensive plan “will be amended” to provide an exception to access spacing standards described in the ordinance to mean that the access spacing exception applies to proposed development notwithstanding the

absence of an executed development agreement. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government is not bound by ORS 215.427 to interpret a local code provision in the manner that it has been interpreted in prior quasi-judicial proceedings on a different application. *Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will not defer to a local government’s interpretation of the phrase “necessary for and accessory to” forest management as meaning “convenient and efficient” to forest management, where such an interpretation is contrary to the plain meaning of the word “necessary,” the express language of the provision at issue, and other language in the provision. *Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation of a code provision defining the study area for an aggregate mine, to exclude haul roads used to transport finished aggregate material off-site, is consistent with the text of the code provision and is not reversible under ORS 197.829(1). *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation that the pre-existing use or structure on a property does not have to be currently lawful for redevelopment of the property to qualify as remodeling or a change of use, rather than new development, is not reversible under the deferential standard of review under *Church v. Grant County*, 187 Or App 518, 69 P3d 759 (2003), and ORS 197.829(1). *Oregon Transfer Company v. City of Milwaukie*, 53 Or LUBA 119 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In determining whether a proposed park and ride lot will result in an increase in parking demand, a local government does not err in comparing the parking demand created by the prior theatre use of the property, which was discontinued six years earlier and the proposed demand will be created by the proposed park and ride lot. In many cases involving remodeling of existing development or a change in use there will be intervals of days, months, or years between uses where no use or associated parking is occurring on the property. *Oregon Transfer Company v. City of Milwaukie*, 53 Or LUBA 119 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s interpretation that its community service overlay (CSO) zoning designation functions as a conditional use rather than a traditional overlay zone is sustainable under *Church v. Grant County*, 187 Or App 518, 69 P3d 759 (2003), and ORS 197.829(1). Therefore,

because the CSO zone overlay can only be applied to approve a specific use, and unlike other city overlay zones, the CSO zone does not require a zoning map amendment, the CSO designation does not trigger the obligation to address the transportation planning rule. *Oregon Transfer Company v. City of Milwaukie*, 53 Or LUBA 119 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Even though the text and context of an ordinance give little indication of the city council’s intent in adopting the ordinance, when there is an undisputed claim that the ordinance was adopted to clarify that the proposed development qualifies as an “assisted residential facility,” the city council does not misconstrue the law in concluding that the proposed development qualifies as an “assisted residential facility.” *Toler v. City of Cave Junction*, 53 Or LUBA 158 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation of code variance and off-street parking standards, to the effect that a potential off-street parking site that would otherwise satisfy the code off-street parking standard need not be considered, because it would require patrons of a proposed restaurant to cross a four-lane highway with no crosswalks or pedestrian facilities. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a city council interpretation that a “self-created hardship” exists for purpose of obtaining a variance to a street access standard, where the applicant has taken actions in the past that are inconsistent with the expectation of obtaining future access, by consolidating the subject property with an adjoining lot that already has access. *Krishchenko v. City of Canby*, 53 Or LUBA 232 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer had authority to modify a prior permit’s condition of approval requiring a perimeter fence, notwithstanding a code provision that prohibits a modification that is a “substitute for an appeal,” where the requested modification is to approve a different fence location following a court order two years after the permit decision, and thus the modification could not have been the subject of an appeal. *Chackel Family Trust v. City of Bend*, 53 Or LUBA 385 (2007).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer’s interpretation of a code standard requiring that proposed grading not cause erosion to any greater extent than would occur in the “absence of development” to mean in the “absence of *proposed* development,” not prior development activities that predated the grading permit application, is reasonable and will be affirmed. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a hearings officer’s interpretation of a code provision requiring that the applicant submit a letter from the service provider, to require only that the letter be submitted, not that it be free of error, where nothing in the text or context suggests that the county

is supposed to second-guess the service provider's assessment. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a zoning ordinance limits residential development on “weak foundation soils,” but does not define that term, the city’s interpretation of that term to include soils that the National Resource Conservation Service rates as having “severe” limitations but not to include soils rated as having “moderate” or “slight” limitations is not reversible under ORS 197.829(1). *Jebousek v. City of Newport*, 52 Or LUBA 435 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation of a plan provision allowing plan amendments when “necessary to correct an identified error in application of the plan,” to include not only instances where the plan was erroneous when first implemented, but also instances where circumstances have changed over time. *Oregon Shores Cons. Coalition v. Lane County*, 52 Or LUBA 471 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a local government’s interpretation of a planned unit development (PUD) standard prohibiting “clear-cutting” of trees, that trees that must be removed for siting individual dwellings will be evaluated at the time of building permit application, not as part of the PUD approval, where the standard does not explicitly require evaluation of trees removed for dwellings, and it is impossible to determine at the time of PUD approval which trees must be removed for dwellings. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county’s zoning code, like the Goal 4 rule, categorizes certain less intensive uses as outright permitted uses and similar but more intensive or permanent uses as conditional uses allowable on forest lands, an interpretation that the more intensive use is allowed outright as an accessory use to forest operations free of restrictions imposed on the less-intensive

use is inconsistent with the structure of the code. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Determining whether a “permanent logging equipment repair and storage” structure that is a listed conditional use under the Goal 4 rule but is not provided for at all under the county’s forest zone is allowed as an outright permitted “accessory” use to forest operations requires interpretation of the text and context of the zoning code. Accordingly, LUBA’s review of that interpretation is governed by ORS 197.829(1)(d) rather than the principle described in *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 911 P2d 250 (1996). *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That a base commercial zone does not provide for residential uses does not mean that an overlay zone that allows residential uses is necessarily inconsistent with the base zone. Absent some textual or contextual basis to conclude otherwise, LUBA will affirm a governing body’s interpretation that the overlay zone may authorize additional uses not authorized in the base zone. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

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

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s code interpretation that harmonizes and gives effect to two conflicting provisions, where the only other interpretation proffered would nullify an entire code chapter. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer does not err in interpreting a code provision that allows the “preparation of land for cultivation” that is a “customarily accepted agricultural activity” without a permit in agricultural zones to require the landowner to demonstrate that a proposal to cover an existing landfill with 100,000 cubic yards of soil not only involves “preparation of land for cultivation” but is also a “customarily accepted agricultural activity.” *Ehler v. Washington County*, 52 Or LUBA 663 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a refinement plan specifies that applicable plan policies are “guidance for decision-making,” as long as the decision maker actually considers applicable plan policies and explains the basis for its choice to give one policy greater weight than another, where different policies compete or point to different results, LUBA will not disturb that choice on review. *Bothman v. City of Eugene*, Or LUBA 701 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a city council interpretation of a code provision allowing flag lots where a “public street cannot be provided” to allow flag lots where *code-compliant* public streets cannot be provided. Because a non-compliant public street would almost always be theoretically possible, any other interpretation would essentially prohibit flag lots. *Cutsforth v. City of Albany*, 51 OR LUBA 56 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city does not err in interpreting a code provision requiring that a subdivision plat provide access “that will allow its development in accordance” with the code to not require that the applicant provide additional access to a parcel that is already developed consistent with applicable zoning. The code does not require the applicant to provide access to allow for potential redevelopment of developed parcels. *Cutsforth v. City of Albany*, 51 OR LUBA 56 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city annexation ordinance must be reviewed by Metro under its code to determine if the annexation is consistent “with other applicable criteria * * * under state and local law,” Metro does not exceed its interpretive discretion by interpreting that requirement to allow it to determine if the city’s annexation ordinance is inconsistent with two Oregon Supreme Court decisions concerning annexation. *City of Damascus v. Metro*, 51 Or LUBA 210 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the code defines “amphitheater” to include “fixed, permanent or temporary seating,” a phrase that clearly refers to physical objects such as chairs or benches, a hearings officer errs in interpreting “temporary seating” to include bare ground on which people may sit or spread a blanket. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a hearings officer’s interpretation that tents are temporary “structures” for purposes of applying fire safety siting standards to a campground, where the code defines “structure” broadly in a manner that is not limited to permanent structures, and the code clearly subjects campgrounds to fire safety siting standards. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a hearings officer’s interpretation of a code provision requiring calculation of groundwater availability based on a study area including the “average size of lots and parcels within one-quarter mile” of the subject property to include the entirety of all lots or

parcels that are at least partially within one-quarter mile of the property. A hearing officer's refusal to interpret the code to require that the study area be limited to just those portions of lots or parcels within a one-quarter-mile radius is not erroneous, where the county staff manual for more detailed groundwater studies requires consideration of the entirety of lots or parcels that are bisected by a one-quarter-mile radius, and it is reasonably clear that both types of studies consider the same area. *Upright v. Marion County*, 51 Or LUBA 415 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the purpose of a groundwater study area is to accurately assess the risk to groundwater from residential development, an interpretation that more accurately represents the existing and potential residential development conditions in the area is more consistent with the purpose and underlying policy of the study than a contrary but textually plausible interpretation that considers undevelopable portions of lots as being developable and hence overstates potential development pressures. *Upright v. Marion County*, 51 Or LUBA 415 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A standard requiring a finding that the uses allowed by the proposed zoning “can be served through the orderly extension of key urban facilities and services” does not require evaluation of all theoretically possible uses allowed in the new zone. A city does not err in interpreting such a standard as being satisfied by evidence that uses likely to be developed under the new zone, given the property's size and other constraints, can be served by key urban facilities and services. *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city does not err in assuming that two developed lots that are part of a five-lot tract will not be redeveloped when rezoned, for purposes of a rezoning standard requiring that uses allowed in the proposed zoning can be served by urban services, including transportation facilities, where the applicant does not propose redevelopment and the code requires a similar evaluation when property is redeveloped. *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government has adopted a generally applicable procedure under which it corrects violations of a variety of local laws by filing actions in circuit court, a local government decision that an existing use of property does not constitute a violation of its zoning ordinance that would justify filing a circuit court action under that procedure is not a land use decision. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government correctly interprets its zoning code only to allow local appeals of decisions that will constitute land use decisions when they become final. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government misconstrues its local code when it interprets the word “ownerships” to have different meanings in different parts of the code. *Brown v. Lane County*, 51 Or LUBA 689 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where it is possible to interpret a development code provision to require consideration of more facilities and services than a similar comprehensive plan policy and to require that those facilities and services be already available at the time of annexation, but a local government implicitly interprets the development code policy simply to implement the comprehensive plan policy and to be coextensive with the plan policy, LUBA will defer to that interpretation where there are other development code provisions that support that limited interpretation. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code standard allowing an increased or reduced setback for cellular towers based on considerations such as topography, etc., that increase or reduce off-site impacts need not be interpreted to include an implicit “no net increase” in off-site impacts standard. *Tollefson v. Jackson County*, 51 Or LUBA 790 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer errs in interpreting a code standard that allows a reduced setback for cellular towers based on listed considerations that increase or reduce off-site impacts, to allow a reduced setback as long as the applicant has minimized off-site impacts “to the extent possible” given the dimensional constraints of the property, where considerations such as the shape of the property and whether the applicant has minimized off-site impacts to the extent possible are not among the permissible considerations. *Tollefson v. Jackson County*, 51 Or LUBA 790 (2006).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a governing body’s interpretation that retaining walls that prevent erosion of a bluff on a public park are accessory to park uses, notwithstanding that the walls also serve to protect adjoining private property. *Moreland v. City of Depoe Bay*, 50 Or LUBA 44 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a code provision prohibiting removal of “riparian vegetation” plausibly could be interpreted either to apply throughout the zone or only within a defined “zone of riparian vegetation,” LUBA will affirm a governing body’s interpretation that the code provision applies only within the zone of riparian vegetation. *Moreland v. City of Depoe Bay*, 50 Or LUBA 44 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county inventoried big game habitat, identified conflicting uses, analyzed the ESEE consequences, and identified the subject property as a 3B site (allow the uses which conflict with the resource site fully), the county governing body’s interpretation that its code exempts 3B sites from further ESEE analysis is entitled to deference. *Kemp v. Union County*, 50 Or LUBA 61 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. County’s interpretation that use of the past tense in plan language that

development in a particular residential area “was limited to the creation of long, narrow lots adjacent to the roads” indicates that the plan provision does not constitute a mandatory approval criterion for the challenged partition is entitled to deference. *Kemp v. Union County*, 50 Or LUBA 61 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local ordinance that prevents reconsideration within a year of a denied application “following the close of the public hearing” does not prevent reconsideration of a resubmitted site plan application that was part of a prior application that was denied following a public hearing, when the public hearing only considered a plan and zone change combined with the site plan application rather than the site plan application itself. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A new application that eliminates a previously proposed plan and zone change on adjacent parcels but retains essentially the same site plan application is not the “same or substantially similar” as the prior application for purposes of a local ordinance that precludes reconsideration of such applications within a year after denial of the first application. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When an ordinance requires “windows or transparencies” and the local government denies an application for providing windows that are not transparent, the local government’s interpretation is inconsistent with the express language of the ordinance. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. County interpretation that ordinance requiring a 25-foot access easement cannot be satisfied by two physically separated 20-foot easements is not inconsistent with the language, purpose, or policy of the ordinance, even if petitioner’s suggested interpretation might also be consistent with the ordinance. *Blossom Properties, LLC v. Marion County*, 50 Or LUBA 269 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a local government interpretation that an elevated walkway that extends over an estuary zoned Water is not located in the Water zone, where the walkway is attached to a dock that is in a Marine Commercial zone. *Crowley v. City of Bandon*, 50 Or LUBA 389 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That a code provision prohibiting application of urban residential zones outside urban growth boundaries is outdated may be a compelling argument for amending the code provision, but it is not a sufficient reason for the local government to ignore it. *Oregon Shores Cons. Coalition v. Coos County*, 50 Or LUBA 444 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. LUBA will affirm a governing body’s interpretation allowing residential units within a “recreational planned unit development,” notwithstanding that “residential uses” are prohibited in the underlying zone, where the zone nonetheless allows a recreational planned unit development, and the code definition of that term includes residential units as a core component. *Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code standard requiring that the local government apply the more restrictive standard when two or more conflicting standards apply does not govern circumstances where it is unclear which of two standards applies. In such circumstances, the local government must interpret its code to determine which of the standards governs the proposed use. *Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where both possible interpretations of a code density standard equally conflict with other code provisions, the choice of which interpretation to adopt is up to the local government. *Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An interpretation made by county counsel in a stipulated dismissal in a circuit court mandamus proceeding is not entitled to deference under ORS 197.829(1). *Flying J. Inc. v. Marion County*, 49 Or LUBA 28 (2005).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code requires that the zoning map be amended to an “appropriate designation” of the city when an area is annexed, and the city adopts county zoning for the annexed area but does not explain how county zoning satisfies the code requirement, remand is appropriate for the city to adopt findings or an interpretation demonstrating that the county zoning is consistent with the code requirement. *Hammons v. City of Happy Valley*, 49 Or LUBA 38 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government is within its discretion under ORS 197.829(1) to interpret a planned unit development regulation requiring protection of “public safety” on sites with natural hazards “through clustering of development” on that portion of the site suitable for development as not requiring consideration of off-site impacts of proposed development. *Dinges v. City of Oregon City*, 49 Or LUBA 376 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county errs in interpreting a rezoning code provision requiring that “[o]ther lands in the county” are unavailable or not as well-suited as the subject property to limit the inquiry to lands outside UGBs, where nothing in the text or context so limits the inquiry, and context

directs the county to locate uses allowed under the proposed zone within UGBs. *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA 529 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code criterion requires that a nonfarm dwelling be situated on a portion of a lot or parcel that is “generally unsuitable for the production of farm crops and livestock or merchantable tree species,” and the code then spells out the considerations for determining whether a portion of a lot or parcel is “unsuitable for farm use,” the term “farm use” is not properly read to require evaluation of the suitability for farm uses other than the production of farm crops and livestock or merchantable tree species. *Griffin v. Jackson County*, 48 Or LUBA 1 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where code language limiting “gross square footage” is ambiguous and, based on text and context, could plausibly limit either “footprint” or “gross floor area,” a governing body’s choice between two equally plausible meanings is within its discretion under ORS 197.829(1) and *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003). *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city correctly construes a policy that conditions connection to or extension of city water and sewer service upon annexation or consent to annexation not to prohibit the city from requiring consents to annexation in other circumstances. *Roads End Sanitary District v. City of Lincoln City*, 48 Or LUBA 126 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will decline to interpret a local provision in the first instance under ORS 197.829(2), where the provision is subject to several potential interpretations, some of which, if adopted, would require reversing the decision. In such circumstances, remand is appropriate to allow the governing body to interpret the provision in the first instance. *Moreland v. City of Depoe Bay*, 48 Or LUBA 136 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where it is not clear from the comprehensive plan map whether the plan designation governing the subject property is a base or an overlay plan designation, LUBA will affirm a governing body’s interpretation that the plan designation is an overlay designation, where the comprehensive plan text does not list or describe the designation as a base plan designation. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s interpretation of its own legislation that the ocean front setback line be measured from the edge of adjacent “enclosed living areas” rather than attached decks and patios is inconsistent with the express language of the local ordinance, where that ordinance measures the setback from the edge of adjacent “structures” and “structures” is defined to include decks and patios. *Tonges v. City of Manzanita*, 48 Or LUBA 296 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. Because OAR 660-006-0025(4)(t) does not require that “existing buildings” that are to be used for hardship dwelling must be connected to the same septic system that serves the existing dwelling, it would not be inconsistent with OAR 660-006-0025(4)(t) to interpret an ambiguous zoning ordinance provision for hardship dwellings in exclusive farm use zones not to impose that requirement either. *Burton v. Polk County*, 48 Or LUBA 440 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Given the significant regulatory distinctions between “single family dwellings” and “tourist rental cabins” allowed in a rural zone, a county may approve proposed cabins that will be owner-occupied part of the year under the densities allowed for “tourist rental cabins” only if their use for something other than “tourist rental cabins” is *de minimis*. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Owner-occupancy for 120 days per year is not a *de minimis* use of a dwelling, consistent with the status of dwellings as “tourist rental cabins.” *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reject an argument that a code limitation on “buildable area” regulates only the interior, habitable space of a dwelling, where the local government has previously interpreted the code provision to regulate uninhabited structures such as garages or sheds, and the context and legislative history of the provision indicates that it is intended to limit the area of a lot or parcel covered by structures, not the area of interior or habitable space. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An interpretation that some decks but not others are regulated under a code provision limiting the “building area” of a lot or parcel is inconsistent with the text and purpose of the provision, where the relevant terms do not distinguish between types of decks and the apparent purpose of the provision is to limit the area of a lot or parcel covered by structures. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation that it has authority to modify a condition of preliminary subdivision plat approval under a code standard allowing “minor changes” to an unrecorded subdivision plat is not reversible under ORS 197.829(1). *Cove at Brookings Homeowners Assoc. v. City of Brookings*, 47 Or LUBA 1 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s alleged misinterpretation of a code provision does not provide a basis for reversal or remand, where the only significance petitioner attaches to the misinterpretation relates to an issue that was not raised below and is therefore beyond LUBA’s review. *Comrie v. City of Pendleton*, 47 Or LUBA 38 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. A governing body's interpretations that (1) the transportation system plan (TSP) is part of the city's comprehensive plan, (2) projects described in the TSP supersede transportation projects described in the comprehensive plan, and (3) extension of a different street than contemplated in the TSP is consistent with TSP language intended to allow the city flexibility in choosing which street to extend, are not reversible under ORS 197.829(1). *Comrie v. City of Pendleton*, 47 Or LUBA 38 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a finding is ambiguous and could be read to misinterpret a code provision, but read in context it is reasonably clear that the local government did not intend the erroneous interpretation petitioner ascribes to it, and in fact intended an interpretation consistent with the code provision, petitioner's arguments based on that ambiguous finding do not provide a basis for reversal or remand. *Wynn v. Polk County*, 47 Or LUBA 73 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer errs in determining that an internal logging road is not a "road" because of its poor condition and infrequent use, where the code definition of "road" does not assign significance to the road's condition or frequency of use. *McAlister v. Jackson County*, 47 Or LUBA 125 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a hearings officer misinterprets the code term "road," but does not address either the applicant's proposed interpretation that a logging track can be a "road" or a contrary planning staff interpretation that only platted rights-of-way or legally described easements are "roads," LUBA will remand the decision to the hearings officer to reconsider what constitutes a "road." *McAlister v. Jackson County*, 47 Or LUBA 125 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government may not interpret a local code provision that requires connection to "an existing city standard paved street" to be satisfied by a security deposit in lieu of an improved street. *Doob v. City of Grants Pass*, 47 Or LUBA 152 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government has the discretion to interpret a local code provision requiring private streets to provide for pedestrian needs in a "safe and functional manner" to not require sidewalks on private streets serving four or fewer units, in context with another code provision that requires sidewalks on private streets only if the streets serve more than four units. *Doob v. City of Grants Pass*, 47 Or LUBA 152 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a conditional use approval criterion requires a finding that the proposed conditional use will have minimal adverse impacts "compared to the impact of development that is permitted outright," a county decision that interprets that criterion to be met by a proposed commercial recreational park, because an otherwise identical publicly owned recreational park could be approved as a use permitted outright, is not reversible under ORS 197.829(1). *Gumtow-Farrior v. Crook County*, 47 Or LUBA 186 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Findings that rely on code drainage requirements to avoid impacts on adjacent farming are adequate to demonstrate compliance with a code standard requiring no significant impact on farming, where the only issue raised regarding impacts on adjacent farming involved drainage. *Nelson v. Curry County*, 47 Or LUBA 196 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation of a design review criterion requiring that the “bulk and scale” of a proposed retail supercenter be “compatible” with surrounding buildings as necessitating a comparison of the size of the proposed buildings and surrounding buildings—and not just visual compatibility—is consistent with the text of the criterion and not reversible under ORS 197.829(1)(a). *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. There is no intrinsic reason why a regulatory concern to ensure compatibility of size between proposed and existing development must be expressed as zoning standards rather than as site design review standards. *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s interpretation that a code definition of “Construction Sales and Services,” allowing retail sale of “materials used in construction, maintenance and repair/remodel of buildings,” does not limit the materials sold to any particular subset of “repair/remodel” materials is not inconsistent with the express language, purpose or underlying policy of the code definition. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the city’s new acknowledged comprehensive plan includes a provision stating that existing development zones continue to apply until the new code is acknowledged, it is within the city’s discretion under ORS 197.829(1) to interpret that plan provision to resolve any conflicts between the old zoning code and new comprehensive plan designations. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is within a city’s interpretive discretion under ORS 197.829(1) to interpret comprehensive plan language setting out considerations for locating commercial development in the city as being planning directives to the city to be used in determining the appropriate plan designation or zone, and not as approval standards that an applicant for commercial development permitted outright in a particular zone must satisfy. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local code provision that requires legislative amendments to be consistent with the comprehensive plan and land use ordinances is not properly interpreted to require repeal and re-adoption of the entire comprehensive plan in order to amend a portion of the plan. The local

government's interpretation that amendments must be consistent with *unamended* provisions of the plan and land use ordinances does not misconstrue the applicable law. *Stevens v. Jackson County*, 47 Or LUBA 381 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city does not exceed its discretion under ORS 197.829(1) in interpreting a code provision requiring that development not be contrary to applicable comprehensive plan policies to allow a balancing of competing comprehensive plan policies. *Chin v. City of Corvallis*, 46 Or LUBA 1 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That a city sign code adopts the Oregon Motorist Information Act (OMIA) by reference may indicate that the city intends to allow at least some OMIA-permitted signs within the city, but does not necessarily indicate that all OMIA-permitted signs are allowed in the city, much less that OMIA-permitted signs are allowed outright without further city regulation. *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a sign code provision stating that state sign permit holders need not seek separate city approval can be read either to (1) allow such signs outright within the city, or (2) allow such signs only if otherwise permitted by the sign code, and either interpretation is consistent with the text and context of the provision, the city's choice between interpretations is not reversible under ORS 197.829(1)(a). *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the purpose of a sign code includes preventing sign clutter and minimizing distractions for motorists, a sign code interpretation that results in smaller and lower signs along public highways than would result under other interpretations is consistent with the code's purpose and underlying policy, for purposes of ORS 197.829(1)(b) and (c). *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A broad and poorly defined sign code prohibition on "billboards" does not necessarily require inquiry into the content of signs or allow content-based distinctions where, as interpreted by the city, the code allows or prohibits all signs, including "billboards," based on specific standards that do not require inquiry into the content of proposed signs. *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A poorly defined code prohibition on "billboards" is not unconstitutionally overbroad when, read in context, it is subject to a narrowing construction that clarifies the meaning of "billboard" and the precise scope of the prohibition. *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A poorly defined code prohibition on "billboards" is not unconstitutionally vague

where, as interpreted and read in context, the sign code provides definite and objective standards governing all signs, including billboards, and does not grant the city “unbridled discretion” to approve or deny proposed signs. *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The governing body is within its discretion under ORS 197.829(1) in interpreting a standard to be a post-approval performance standard on industrial uses rather than an approval criterion, where the standard is within a section entitled “performance standards” and prescribes impermissible levels of pollution rather than approval criteria. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city is entitled to appropriate deference to its interpretations of regional land use legislation under ORS 197.829(1), notwithstanding that the city is one of several enacting bodies that adopted the regional land use legislation. *Jaqua v. City of Springfield*, 46 Or LUBA 134 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A planning commission incorrectly interprets a code standard prohibiting “construction” on slopes greater than 30 percent to limit only construction of a building within a building envelope, and not to include a steep driveway and retaining walls, where the plain meaning of “construction” is not limited to buildings, the text and context do not suggest that the governing body intended to limit its regulatory effect to building envelopes, and the proposed driveway and retaining walls implicate the same regulatory concerns regarding erosion and visual scarring underlying the code standard as would construction of a building. *McCulloh v. City of Jacksonville*, 46 Or LUBA 267 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county’s interpretation that cabins used more than half the year for residential use by owner-occupants and less than half the year for rental to tourists qualify as “tourist rental cabins” is inconsistent with the code definition of that term, where rental to tourists is the key definitional element, the code applies important regulatory distinctions to tourist uses and residential uses, and nothing in the text or context of the code suggests that more than *de minimis* residential use of the cabins is compatible with their status as tourist rental cabins. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a code definition of “tourist rental cabins” can plausibly be read to allow separate ownership of buildings and land on property, and legislative history in the record supports that interpretation, a county’s interpretation that the cabins and underlying land need not be in common ownership is consistent with that definition and not reversible under ORS 197.829(1). *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where two interpretations of a local code are both less than compelling and neither interpretation is inconsistent with the apparent purpose or policy of the code, LUBA will defer to

the interpretation adopted by the local government. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. City interpretation that hospitals can be auxiliary uses in residential zones is not inconsistent with the express language of the comprehensive plan when hospitals are already allowed as auxiliary uses in some residential zones under acknowledged local code. *Friends of Eugene v. City of Eugene*, 46 Or LUBA 721 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. City interpretation that hospitals can be permitted in industrial zones is not inconsistent with the express language of the comprehensive plan when the comprehensive plan does not preclude non-industrial uses that are compatible with industrial uses. *Friends of Eugene v. City of Eugene*, 46 Or LUBA 721 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government could permissibly interpret local code to allow variance to minimum lot size standard where general variance standards were met. *Walker v. Josephine County*, 46 Or LUBA 777 (2004).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the text of a local code standard does not require that an applicant establish that a proposed subdivision will not adversely affect nearby wells and does not require a finding that the applicant will be able to secure state agency approvals for its water supply, the local government is within its interpretative discretion under OAR 197.829(1) in interpreting that standard not to impose those obligations. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government does not misconstrue a local ordinance requiring permanent legal access to a parcel by relying on easements entered into by prior landowners with government agencies providing reciprocal rights for access. *Sisters Forest Planning Comm. v. Deschutes County*, 45 Or LUBA 145 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council interpretation of a comprehensive plan policy that prohibits “highway commercial development” south of a particular intersection as prohibiting “any commercial development” south of the intersection rather than “Highway Commercial” zoning or commercial development with direct access to the highway is not reversibly wrong. *Barton v. City of Lebanon*, 45 Or LUBA 214 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a city council interpretation of its zoning ordinance as not requiring a separate zoning amendment application where city zoning is applied to property inside the city’s urban growth boundary as part of the annexation process. *Barton v. City of Lebanon*, 45 Or LUBA 214 (2003).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An interpretation of a local code provision to allow an offsite parking lot in conjunction with a commercial use in a residential zone where such commercial uses are prohibited is not reversible under ORS 197.829(1), where the context of the code provision includes regulations governing the residential zone that expressly allow a public parking area for use by persons patronizing a particular building or establishment. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A hearings officer does not err in evaluating the adequacy of the “approach” to an intersection, rather than individual turning movements in the intersection, where the applicable code provisions do not specify a particular method for evaluating intersection adequacy, and that method is consistent with the highway capacity manual and county highways standards cited by the code provisions. *Noble v. Clackamas County*, 45 Or LUBA 366 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government interpretation of its own code that allows home occupations to exhibit some characteristics of a business does not violate ORS 197.829(1) when the local government code expressly allows for up to five employees, on-premises signage, and on-premises parking. *Stewart v. Coos County*, 45 Or LUBA 525 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city does not err in concluding that a parking lot on a portion of the Oregon State University Campus that is three quarters of a mile from proposed development is in “close proximity” to proposed development and on the same or abutting “site,” where the city finds the campus to be a single integrated “site” and three quarters of a mile a reasonable distance for college students to walk, given adequate pedestrian facilities and shuttle services. *Bagnell v. City of Corvallis*, 44 Or LUBA 284 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Given the similarity between a code provision requiring preservation of “existing landscape features and amenities” “to the greatest extent possible,” and another code provision requiring preservation of “significant trees and vegetation” “to the maximum extent practicable,” a city does not err in interpreting one provision to be satisfied by findings addressing the other. *Bagnell v. City of Corvallis*, 44 Or LUBA 284 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. No reasonable person could interpret a plan policy stating that the county plans to participate with other counties in a regional aggregate needs analysis as imposing a requirement that an applicant seeking to amend the county’s aggregate inventory must establish a “public need” for aggregate. *Hegele v. Crook County*, 44 Or LUBA 357 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Although LUBA might be required to defer to a city interpretation of a subdivision criterion that requires that a proposed subdivision provide access to adjoining property as not applying where an adjoining property currently has access that it may lose in the future through condemnation, LUBA will not assume the criterion does not apply where the challenged decision does not adopt that interpretation. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Although a code provision that prohibits approval of a conditional use permit in circumstances where there are existing violations of county ordinances does not dictate that a condition of approval be included with a conditional use permit that the conditional use permit may be revoked if those violations recur in the future, it is within the county’s discretion to interpret that code provision to permit it to impose such a condition. *Cookman v. Marion County*, 44 Or LUBA 630 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Although a city might reasonably interpret a rezoning criterion that requires application of the “best suited” zone to require that an applicant demonstrate a need for the uses that would be allowed under the requested zoning, a city might also reasonably reject that interpretation and find that current land use needs are not relevant to its decision regarding which zoning district is “best suited.” *Dimone v. City of Hillsboro*, 44 Or LUBA 698 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county errs in interpreting a one dwelling per 40 acres density standard intended to protect Goal 5 wildlife habitat to be satisfied if the average dwelling density over a 1.2-million-acre area of the county does not exceed the standard, where the county’s interpretation gives the standard no regulatory effect until over 28,000 dwellings are built in the area, and is inconsistent with the purpose of the standard to protect wildlife habitat. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local standard imposing a one-dwelling-per-40-acres density limitation on Goal 5-protected wildlife habitat must be construed in a way that is consistent with its purpose and context to allow no more than one dwelling per 40 acres on the subject property. As applied to a destination resort, such a standard may effectively prohibit a resort that proposes 200 single-family residential lots in a 500-acre area. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county is within its discretion under ORS 197.829(1) in interpreting a code provision requiring a showing of “public need” for “rezonings,” to apply only to map amendments to a base zone, and not to map amendments to an overlay zone. *Doty v. Jackson County*, 43 Or LUBA 34 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code provision that allows certain uses in a zone “provided that the use promotes

the purpose of the zone” is, on its face, a mandatory approval criterion. A city interpretation that fails to give any meaning to that language, and effectively reads it out of the code, is inconsistent with the express language of the code and is not entitled to deference under ORS 197.829(1). *Crowley v. City of Bandon*, 43 Or LUBA 79 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government is within its discretion under ORS 197.829(1) to interpret a standard requiring that “other lands in the county” be unavailable for the uses allowed under proposed rezoning to be satisfied by examining lands in the vicinity of the subject property, and not to require consideration of all lands throughout the entire county. *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 97 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city is within its discretion under ORS 197.829(1) in interpreting the term “bankful stage” to be equivalent to “top of the bank,” where the pertinent code language was modeled on a Metro ordinance that expressly equates the two terms. Such an interpretation is not rendered erroneous simply because the unusual topographic facts of a case may make locating the “bankful stage” at the “top of the bank” mean that a portion of the subject property is undevelopable. *Starks Landing, Inc. v. City of Rivergrove*, 43 Or LUBA 237 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation of a code provision that fails to provide any independent meaning to a key term and that effectively eliminates that term from any function in the code is not entitled to deference under ORS 197.829(1). *Church v. Grant County*, 43 Or LUBA 291 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. ORS 197.175 requires that land use decisions comply with the applicable comprehensive plan. However, whether a particular plan provision is an approval criterion for a particular quasi-judicial land division application depends on the language of the comprehensive plan and its implementing regulations, with appropriate deference to any explicit or implicit interpretations of the comprehensive plan and implementing regulations by the local government. *Donivan v. City of La Grande*, 43 Or LUBA 477 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s decision to affirm a lower body’s decision is sufficient to impute any local code interpretation of the lower body to the governing body, with or without a hearing before the governing body, unless the governing body expressly rejects or changes that interpretation. *Baker v. Lane County*, 43 Or LUBA 493 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A reasonable person could interpret the term “lodge” in the phrase “lodges and grange halls” to refer to more than a fraternal meeting place, and to include a commercial lodging facility like an inn or resort hotel, where both senses are within the dictionary definition of the term, and other code provisions the county separately provide for a “fraternal meeting place” and a “hotel, motel or lodge.” *Baker v. Lane County*, 43 Or LUBA 493 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local variance provision imposes on the applicant the burden of establishing the nonexistence of alternatives to the variance, the local government errs in interpreting its code to impose on opponents the burden of establishing the existence, costs and consequences of alternatives. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where LUBA cannot tell if the local government simply weighed conflicting evidence, or instead impermissibly rejected the opponent’s evidence for failure to satisfy a nonexistent burden of proof, the local government’s error in explicitly shifting the burden of proof to the opponents is not harmless. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code interpretation to the effect that the county need not consider lesser height variances if the proposed additional height poses no conflicts with views is inconsistent with code language that (1) requires consideration of lesser or no variances, and (2) contains no exception for variances that do not pose conflicts with views. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code interpretation that limits the scope of alternative height variances that must be considered to those that provide the applicant with the same 35-foot height limitation allowed in a different regulatory zone is an impermissible amendment in the guise of interpretation, where the interpretation changes a rigorous alternatives analysis into a pro forma exercise and eliminates a regulatory distinction between zoning districts. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city’s plan and zoning ordinance provisions provide that development within 500 feet of transit stops “should” be pedestrian-oriented and encourage “pedestrian and transit-friendly development criteria,” the city’s interpretation that those provisions do not require that only pedestrian-oriented uses may be permitted within 500 feet of a transit stop or promoted within the applicable zoning district is entitled to deference. *Barman v. City of Cornelius*, 42 Or LUBA 548 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city is within its discretion to interpret a zoning ordinance that encourages uses that complement and support existing uses and discourages “auto dependent commercial uses” as not constituting an outright prohibition of auto-dependent uses such as an automobile service station, as long as the automobile service station will be clustered near existing complementary uses such as a shopping center and a fast-food restaurant. *Barman v. City of Cornelius*, 42 Or LUBA 548 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city is within its discretion to interpret a comprehensive plan provision requiring

establishment of a master plan prior to allowing development within a commercial district as being satisfied by the design review process where the city code defines “master plan” as a plan created through the land use review process governing design review and conditional use review, and the city does not have an independent process for establishing a master plan. *Barman v. City of Cornelius*, 42 Or LUBA 548 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county considers dust impacts from mining that may have an impact on neighboring residential uses, those dust impacts may form a basis for denial only if the impacts violate applicable Department of Environmental Quality air quality standards. *Morse Bros., Inc. v. Linn County*, 42 Or LUBA 484 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a regional transportation plan (RTP) specifies that a proposed interchange will include “five lane overpasses,” and the record includes a planning program manager’s interpretation that a short sixth exit lane does not make the interchange inconsistent with the RTP, it is not error for the decision maker to rely on that interpretation and reasoning in determining that the interchange is consistent with the five-lane overpass described in the RTP. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s interpretation of a “public interest” standard for street vacations, that the standard is met when the record shows that potential future development in the area will not require the retention of the street, is not reversible under ORS 197.829(1). *Confederated Tribes v. City of Coos Bay*, 42 Or LUBA 385 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The deferential standard of appellate review of interpretations of local land use laws that is required under ORS 197.829(1) does not apply where the decision maker is not the local legislative body and does not apply to local government interpretations of state land use law. *Jordan v. Columbia County*, 42 Or LUBA 341 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code provision limiting dwelling density to “one dwelling per 38 acres” in a big game overlay zone is meaningless unless given a frame of reference. An interpretation that the required frame of reference is the entire 640-acre section in which the proposed dwelling is located, rather than the area of the section subject to the overlay zone, is not reversible under ORS 197.829(1)(a) to (c), where related code provisions refer to the dwelling density in relation to the “section,” and the county’s interpretation is not inconsistent with the purpose of and policy underlying the overlay zone. *Matiaco v. Columbia County*, 42 Or LUBA 277 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code provision limiting the planning director’s interpretative powers, and prohibiting interpretations of the zoning ordinance that find a use not listed in the zone is “substantially similar” to a listed use, does not necessarily limit the board of commissioners’ interpretative powers. To the extent it may, the commissioners’ interpretation that the proposed

use *is* a listed use is consistent with the code prohibition. *Yeager v. Benton County*, 42 Or LUBA 72 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation that a commercial horse facility that teaches children how to ride and care for horses is a “recreational facility” allowed as a conditional use in a rural residential zone is within its interpretative discretion under ORS 197.829(1). That portions of the proposed use can also be described as a commercial “riding arena,” which is expressly allowed in a different zone, does not mean that the proposed use cannot be a “recreational facility,” or that the county adopted a de facto code amendment altering the uses allowed in the rural residential zone. *Yeager v. Benton County*, 42 Or LUBA 72 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A board of county commissioners does not exceed its interpretive discretion under ORS 197.829(1) when it interprets a comprehensive plan policy to “[e]nsure that traffic attracted to commercial development will not adversely affect neighborhoods” as being limited to examining traffic impacts on “residential” neighborhoods and to the “local” streets that serve such residential neighborhoods. *Swyter v. Clackamas County*, 42 Or LUBA 30 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A board of county commissioners acts within its interpretive discretion under ORS 197.829(1) where it interprets a comprehensive plan policy to “[e]nhance energy conservation and transportation system efficiency by locating opportunities for housing near work and shopping areas” to be met in the “obverse” situation where a proposal would “locate work and shopping areas near housing.” *Swyter v. Clackamas County*, 42 Or LUBA 30 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city is within its discretion under ORS 197.829(1) in interpreting code language providing for “certain limited commercial” uses within a Residential Transitional zone as not limiting commercial uses to those listed in the Limited Commercial zone. *Chilla v. City of North Bend*, 41 Or LUBA 539 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city does not exceed its discretion under ORS 197.829(1) in interpreting code language providing for “rezoning” of property for limited commercial purposes “on a conditional use basis” to allow limited commercial uses on the property pursuant to a conditional use permit, without amending the zoning map to apply a commercial zone to the property. *Chilla v. City of North Bend*, 41 Or LUBA 539 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A proposed communication tower may be subject to code provisions governing “transmission and receiving towers,” even though it is county-owned and thus also arguably falls within a broad category of “municipal uses” allowed in the zone. Where a regulatory scheme lists as permitted uses in a zone both a general category of uses and a specific category of uses, with different sets of requirements, and the proposed use fits within the specific category, the specific category and its requirements apply exclusively. *Luedtke v. Clackamas County*, 41 Or LUBA 493

(2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where county road standards that apply when new lots are created by major partition or subdivision do not by their terms apply where lot lines are adjusted, the board of county commissioners is nevertheless within its interpretive discretion under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), where it interprets separate code requirements for lot line adjustments as requiring that those county road standards be applied when providing access to lots for which lot lines have been adjusted. *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 476 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is within a city governing body’s discretion under ORS 197.829(1) to interpret a code provision requiring that the transportation system be capable of safely supporting the proposed use, considering eight factors including “level of service,” as not requiring that affected intersections maintain an acceptable level of service at all times. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A comprehensive plan provision that directs that a city should work with a county to ensure that certain lands are planned for residential development does not require the city to zone those lands exclusively for residential development. *Dimone v. City of Hillsboro*, 41 Or LUBA 167 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Plan policies that were clearly adopted to implement Goal 17 are not rendered inapplicable to a decision to approve fill in a coastal shoreland simply because the city codified those policies under the part of the comprehensive plan that is nominally devoted to Goal 16. *Willhoft v. City of Gold Beach*, 41 Or LUBA 130 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioners’ interpretational challenge of a city’s finding that proposed development complies with code provisions implementing Goal 5 is, in essence, an argument that the city’s code provisions are insufficient to implement Goal 5, LUBA will reject the challenge as an impermissible collateral attack on the city’s acknowledged Goal 5 regulations. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The terms and not the title of a code provision setting forth certain exceptions to prohibited activities in riparian areas control the scope of the exceptions in that provision. LUBA will affirm a hearings officer’s interpretation to that effect where the text and context of the provision indicate that the provision applies more broadly than its title suggests. *Tylka v. Clackamas County*, 41 Or LUBA 53 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm as reasonable and correct a hearings officer’s interpretation of

code provisions requiring that a proposed recycling facility be served by an adequate transportation system, to allow the facility notwithstanding some impacts on nearby failing intersections, so long as imposed conditions are sufficient to ensure that those impacts are *de minimis*. *K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A governing body’s interpretation of two provisions granting broad rights to use and develop lawfully created substandard lots is not sustainable under ORS 197.829(1), where the governing body draws an implication from the second provision and uses that implication to prohibit what the first code provision expressly allows, in a manner that effectively eliminates the first provision. *Church v. Grant County*, 40 Or LUBA 522 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city code provision requires that a “proposal” to adjust development standards be reviewed for compliance with specific criteria, it is reasonable for the city to determine that the scope of the “proposal” is the adjustment proposed by the applicant and therefore that an application for a setback adjustment for a building facade does not require review of the building design as a whole. *Lee v. City of Portland*, 40 Or LUBA 498 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city code requirement that multiple requests for adjustments must cumulatively comply with the overall purpose of the zone does not require the city to consider potential future adjustment requests that are not before it. The city’s interpretation that limiting its consideration and approval to the adjustment request before it does not preclude the possibility of future adjustments is reasonable and correct. *Lee v. City of Portland*, 40 Or LUBA 498 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s interpretation that a state highway is not subject to city road design standards for streets providing access to a proposed subdivision is not clearly wrong, and is entitled to deference under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Costanzo v. City of Grants Pass*, 40 Or LUBA 471 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city does not err in determining that a code provision requiring that roads providing access to a proposed subdivision be paved to city standards is satisfied by a state highway that is paved to state standards. *Costanzo v. City of Grants Pass*, 40 Or LUBA 471 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is within a city council’s discretion under ORS 197.829(1) to interpret its code to limit design review of historic landmarks to historic design review criteria, where the code’s design review provisions state that historic landmarks are exempt from design review and are instead subject to historic design review. *Pearl District Neigh. Assoc. v. City of Portland*, 40 Or LUBA 436 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An apparent conflict between a city’s current code, as interpreted, and a set of

uncodified ordinances and guidelines that reflect superseded code language provides no basis to reverse the city's code interpretation. *Pearl District Neigh. Assoc. v. City of Portland*, 40 Or LUBA 436 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is within a city council's discretion under ORS 197.829(1) to interpret a code provision that requires the "transportation structure" to be "adequate," as not requiring separate quantified empirical analysis with respect to separate components of the transportation system, such as parking. Under that interpretation, it is permissible for the city to rely on the ready availability of transit, bicycle and pedestrian transportation, and evidence that development allowed under rezoning can satisfy previously established off-street parking requirements, to conclude that the transportation structure is adequate with respect to parking. *Wakelin v. City of Portland*, 40 Or LUBA 401 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is within a governing body's discretion under ORS 197.829(1) to interpret a comprehensive plan provision that allows commercial rezoning of "areas" having "an historical commitment to commercial uses," neither to require a demonstration of exclusive commercial use, nor to require that the "area" under consideration include an entire parcel. *Huff v. Clackamas County*, 40 Or LUBA 264 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Statutory nonconforming use provisions at ORS 215.130 do not prohibit rezoning land to allow uses that would not be allowed to continue as nonconforming uses. Nor is the statute violated or undermined by the county's consideration of a history of illegal commercial uses, in applying a plan provision that allows land that has an "historical commitment" to commercial uses to be rezoned for commercial use. *Huff v. Clackamas County*, 40 Or LUBA 264 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a zone change criterion requires that an area have a "historical commitment to commercial uses" and the county governing body finds that criterion is met by a property that has been vacant for 11 years but was used for commercial purposes for the prior 65 years, LUBA will defer to that interpretation under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Swyter v. Clackamas County*, 40 Or LUBA 166 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city governing body expressly interprets a traditional "extraordinary circumstances" variance criterion as being met in a circumstance where it traditionally would not be satisfied, that interpretation must nevertheless be affirmed under ORS 197.829(1) if the city governing body's interpretation is not inconsistent with the "express language" or the "purpose"

of the variance criterion. *Reagan v. City of Oregon City*, 39 Or LUBA 672 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a variance criterion provides that a variance is not available where the applicant’s circumstances “merely constitute a monetary hardship or inconvenience,” the applicant’s inability to create a second lot out of an existing lot without the variance would appear to “merely constitute a monetary hardship or inconvenience,” absent a contrary interpretation of that criterion by the local governing body. *Reagan v. City of Oregon City*, 39 Or LUBA 672 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Although a city’s interpretation that it may balance applicable comprehensive plan provisions is entitled to deference, remand is necessary when the city fails to consider and balance against other plan provisions applicable provisions in the city’s transportation system plan. *ODOT v. City of Klamath Falls*, 39 Or LUBA 641 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When petitioner disagrees with a local government’s interpretation of its own ordinance but fails to acknowledge or challenge that interpretation, petitioner establishes no basis for determining that the interpretation is clearly wrong. *McNern v. City of Corvallis*, 39 Or LUBA 591 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city code requires that a lot line adjustment may be approved only if adequate public facilities are available to serve the resulting parcels and the proposal is compatible with the comprehensive plan, the city errs in interpreting the code to limit its consideration to the lot line adjustment itself and not the uses proposed on the adjusted lots. *Mountain West Investment v. City of Silverton*, 39 Or LUBA 507 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is within a city council’s discretion to interpret its zoning ordinance to allow commercial-sized greenhouses as outright permitted uses in a residential zone and to allow a related home occupation florist business as a conditional use without considering the impacts that may be associated with the greenhouses. *Latta v. City of Joseph*, 39 Or LUBA 318 (2001).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA owes no deference to a city’s decision *requiring* replat of a previously approved subdivision to modify private easements where it is clear that the city’s decision was based solely on the provisions of ORS chapter 92, notwithstanding that the city subsequently applied local code provisions to determine the relevant approval criteria for the replat and how those approval criteria should be applied. *Haber v. City of Gates*, 39 Or LUBA 137 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. ORS 92.185 provides a specific requirement that *public* easements within a recorded plat must be reconfigured by replatting. However, the express reference in that statute to “public easements” and the absence of an express reference to “private easements” make it clear that reconfiguration of *private* easements within an existing subdivision plat does not require a

replat under ORS 92.185. *Haber v. City of Gates*, 39 Or LUBA 137 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where an approval criterion contains two subsections with similar or overlapping requirements, but the local government’s findings do not address one of the subsections or interpret the criterion to the effect that findings of compliance with both subsections are unnecessary, remand is appropriate to address the omitted subsection or adopt an interpretation justifying the omission. *Chilla v. City of North Bend*, 39 Or LUBA 121 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government fails to interpret a local provision, and the purpose of the provision is unclear and subject to numerous interpretations, LUBA will decline to interpret the provision in the first instance and remand the decision to the local government. *OTCNA v. City of Cornelius*, 39 Or LUBA 62 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a city council interpretation of a comprehensive plan annexation policy that requires the city to “insure that there is a five year supply of vacant land within the city,” as imposing a general anti-sprawl requirement rather than an absolute requirement that the city include no more than a five-year supply of vacant land. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city council interprets that a zone change criterion requiring a public need for the use proposed is met where there is a statistical probability that the segment of the population the proposed facility will serve will need the facility, LUBA will defer to that interpretation. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The existence of vacant land that is planned and zoned for multi-family residential use does not mean there can be no need for additional multi-family residential designated land, where there is a specific multi-family residential need identified and none of the land that is already designated for multi-family residential use is suitable for that specific need. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city may demonstrate compliance with a zoning change criterion that requires that the identified public need will be best served by rezoning the proposed site by showing that other sites, individually or as a group, are inferior to the proposed site. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When a local ordinance creates an exemption from additional approval criteria for uses permitted in the underlying zone, and the ordinance distinguishes between permitted uses and uses subject to administrative review, it is incorrect to determine that wineries, which are uses subject to administrative review, are permitted uses in the exclusive farm use zone, and thus not

subject to the additional approval criteria. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation that “commercial timberland properties” only refers to properties “operated by or for the benefit of commercial timber operations,” and does not include property operated by individuals, is clearly wrong. *Fessler v. Yamhill County*, 38 Or LUBA 844 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the purpose and underlying policy of a local ordinance is, in part, to require consideration of the traffic impacts on transportation facilities caused by rezoning property in order to ensure that any impacts are consistent with the minimum level of service for such facilities, the city’s interpretation that a street accommodating up to 250 average daily trips from adjacent property does not “serve” that property is contrary to the purpose and underlying policy of the ordinance and is clearly wrong. *Anderson v. City of Medford*, 38 Or LUBA 792 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Even if the decision makers were persuaded to reverse their initial decision by a change in city policy that occurred after the subject application was filed, a local government may reinterpret the meaning of indisputably applicable approval standards. *Anderson v. City of Medford*, 38 Or LUBA 792 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a variance criterion provides that the use of a structure may not change as a result of a variance, an interpretation that a variance may nevertheless be granted to convert a storage shed to a medical hardship dwelling is clearly wrong. *Puma v. Linn County*, 38 Or LUBA 762 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A finding that one alternative for providing sewer service to a proposed medical hardship dwelling has been approved by county health officials is inadequate to demonstrate compliance with an approval standard that requires that another alternative be used unless that alternative “is not feasible.” *Puma v. Linn County*, 38 Or LUBA 762 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city code provision allows conditional use approval of a building that exceeds a mandatory height limit provided the increased building height “does not adversely affect the ocean * * * views” of neighboring structures, the city’s interpretation of that provision to mean that the part of the building exceeding the height limit may not block any part of a neighboring property’s view of ocean water from any perspective within the neighboring property is not clearly wrong. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation of code “compatibility” and “livability” standards as requiring that it consider whether a permit proposal for a 24-hour adult video business would result in increased potential for criminal activity and in increased vacancies in nearby offices is

not impermissibly vague and is within the city's interpretive discretion under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Even under the deferential standard of review required by *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), city interpretation of a variance criterion that requires that a variance be “necessary to prevent a hardship to the applicant” as being met because without the variance the applicant will be unable to construct as much storage as he would like to have on the property at his preferred location on the lot is erroneous. *Roberts v. City of Gearhart*, 38 Or LUBA 407 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county code provision specifically requires findings documenting whether there is a need for additional land for a particular purpose and whether the timing is appropriate to rezone land for that purpose, but the county interprets the code provision to not require documentation of the need and timing elements in a particular instance, that interpretation is inconsistent with the express language of the provision and “clearly wrong.” *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 357 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The “exceptional or extraordinary circumstances” standard is a demanding traditional variance standard. Under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), a city may be able to interpret that standard in a more lenient manner than the courts and LUBA have, but the city must articulate that interpretation in its decision. *Bates v. City of Cascade Locks*, 38 Or LUBA 349 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county is within its discretion under ORS 197.829(1) to interpret a code requirement regulating “new residential dwelling units” to apply to a proposal to convert an existing house no longer lawfully used as a dwelling into a watchman/caretaker dwelling. *Bogan v. Coos County*, 38 Or LUBA 166 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county's interpretation that certain comprehensive plan policies are inapplicable to a land use approval because those policies have been implemented by the county code is inadequate for review, where the county fails to identify any code provision that implements those policies or explain why those policies are among the plan policies implemented by the code rather than those that apply to specific land use approvals. *Spiro v. Yamhill County*, 38 Or LUBA 133 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Plan policies requiring that all proposed rural area development “shall be furnished” with an adequate water supply are stated in mandatory terms. A county's interpretation that such policies are aspirational is inconsistent with the terms of those policies and clearly wrong. *Spiro v. Yamhill County*, 38 Or LUBA 133 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county urbanization policy that was adopted to implement Goal 14 must be interpreted consistently with Goal 14’s prohibition against approval of urban uses on rural land. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 37 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will reject a hearings officer’s interpretation that a code standard imposing a riparian buffer zone within a “setback area” does not apply unless a structure is proposed, where a broader interpretation to apply the buffer zone in other circumstances is equally plausible and more consistent with the identified purpose of the code standard. *Tylka v. Clackamas County*, 37 Or LUBA 922 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A conditional use permit standard for aggregate extraction requiring that the applicant submit “sufficient information to allow the county to set standards” regarding the location, quality and quantity of resource available allows but does not obligate the county to set such standards in approving the permit. A local government’s interpretation to that effect is consistent with the express language of the standard and is not reversible under ORS 197.829(1) or *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The standard of review LUBA must apply to a governing body’s interpretation of its own land use regulations is not affected by whether the decision in which the interpretation appears is quasi-judicial or legislative. The deferential standard of review required by *Clark v. Jackson County*, 313 Or 508, 836 P2d 719 (1992), is based on the governing body’s presumed better understanding of the intended meaning of its legislation and the governing body’s political accountability for that legislation. *Homebuilders Association v. City of Portland*, 37 Or LUBA 707 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm as reasonable and correct a determination of a city historic review commission that historic review development standards directed at modifications or impacts on historic property do not apply to new development on vacant lots within an historic district. *Goose Hollow Foothills League v. City of Portland*, 37 Or LUBA 631 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An historic review development standard requiring that development in an historic district be compatible with adjacent historic structures and the rest of the historic district does not require findings of compatibility with specific nonadjacent historic structures or require that the decision maker ensure compatibility with structures in the immediate neighborhood as distinct from the district as a whole. *Goose Hollow Foothills League v. City of Portland*, 37 Or LUBA 631 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. To the extent an historic review development standard requiring that the “historic character” of a property be “retained” applies to new development on a vacant lot within an historic district, a historic review commission does not err in failing to require that new development emulate the design, height, scale and features of the historic structure that previously existed on the lot. *Goose Hollow Foothills League v. City of Portland*, 37 Or LUBA 631 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation that a comprehensive plan policy that requires that scenic views be “promoted and protected” is met where a zoning ordinance amendment will not significantly affect scenic views is not “clearly wrong,” and must be affirmed by LUBA under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the county’s legislation is ambiguous with respect to whether the county “recognizes” a neighborhood association for purposes of statutory notice and local appeal requirements, LUBA will remand to the county for interpretation in the first instance. *McKy v. Josephine County*, 37 Or LUBA 554 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government finds noncompliance with an approval criterion because an intersection outside the traffic study area is inadequate to serve the subject property, but it is not clear why the local government believes the intersection “serves” the property, LUBA will remand to allow the local government to provide a more adequate interpretation of the criterion. *Ontrack, Inc. v. City of Medford*, 37 Or LUBA 472 (2000).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county exceeds its interpretational discretion under ORS 197.829 and *Clark v. Jackson County* where it interprets an ordinance prohibiting home occupations that require alteration of a structure in a manner that changes the character of the structure under the Uniform Building Code, to allow such home occupations as long as the structure is altered to conform to the Uniform Building Code. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. ORS 227.178(3) constrains a city’s ability to change existing interpretations regarding the *applicability* of approval criteria during the course of proceedings on an application, but does not constrain a city’s ability to reinterpret the *meaning* of indisputably applicable standards. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county governing body’s interpretation that a zoning ordinance requirement that “activities” specified in a farm management plan be implemented did not require that each and every task for which a cost estimate was provided in the farm management plan for each year be implemented is not “clearly wrong,” and, therefore, is not reversible under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the issue of when local governments may be required to conform their plans and land use decision making to an amended regional framework plan is a question of statutory construction, Metro’s possible reliance on an interpretation of its own legislation in establishing a compliance schedule under the statutes is entitled to no deference. *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm a local governing body’s interpretation of its land use regulation where petitioners express disagreement with the interpretation but do not explain why the interpretation is inconsistent with the text of the regulation or otherwise legally incorrect. *Freedom v. City of Ashland*, 37 Or LUBA 123 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The scope of additional conflicts that may be considered under OAR 660-023-0180(4)(b)(F), is a question of state law and a county’s interpretation of OAR 660-023-0180(4)(b)(F) is not entitled to the deferential standard of review required by ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county governing body does not exceed its interpretive discretion in interpreting a zoning ordinance provision that allows development of lots of record notwithstanding the lot’s failure to meet lot area, width and depth requirements as not also excusing the zoning requirement that lots that are less than five acres in size be served by a public or community water system. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county governing body does not exceed its interpretive discretion in interpreting a zoning ordinance provision that delegates responsibility to the planning director to interpret the zoning ordinance as not preventing the governing body from interpreting the comprehensive plan in the first instance following an appeal of a planning director decision to the planning commission and the county governing body. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a Goal 4 committed exception imposes a zoning district with a five-acre minimum lot size and a lot of record provision that allows development of lots smaller than five acres but does not impose a specific residential density limit, the county governing body exceeds its interpretive discretion in interpreting the exception as imposing a 2.3-acre minimum residential density. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In the absence of a city’s determination whether a comprehensive plan policy is a mandatory approval criterion, LUBA will exercise its interpretative discretion under ORS

197.829(2) to determine that the plan policy is a mandatory approval criterion, where the terms of the plan policy require the city to determine that essential public services “can be provided to a site” before granting development approval. That the plan policy specifies an exception to its requirements reinforces the conclusion that it is mandatory. *Terra v. City of Newport*, 36 Or LUBA 582 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A comprehensive plan policy requiring that “[e]xcavations and fills shall be limited to those minimal areas where alteration is necessary to accommodate allowed development” is couched in terms imposing certain requirements in development approvals, and is thus a mandatory approval criterion. *Terra v. City of Newport*, 36 Or LUBA 582 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county acts within the discretion afforded by ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992), where the zoning ordinance requires a finding that utilities and services likely to be needed by the “anticipated uses” are available, the county limits allowed uses on the property to the applicant’s proposed use, and the county interprets the term “anticipated uses” to consist solely of the proposed use. A reasonable person could construe the term “anticipated uses” to denote something less than the range of uses allowed in the zone. *City of Newberg v. Yamhill County*, 36 Or LUBA 473 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city’s implicit interpretation that an adjoining public roadway provides access to a manufactured home park for purposes of the city code’s minimum access roadway improvement standard, and that internal proposed roadways are not access roadways, is not clearly wrong. *Wiley Mtn., Inc. v. City of Albany*, 36 Or LUBA 449 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city commission is within its interpretative discretion under ORS 197.829 to determine that a requirement that planned unit development within a natural hazards zone be consistent with applicable comprehensive plan policies is satisfied by a demonstration of compliance with ordinance standards implementing those comprehensive plan policies. *Salvo v. City of Oregon City*, 36 Or LUBA 415 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a plan policy, implementing the Transportation Planning Rule, requires that the parking spaces per capita ratio must be reduced by 10 percent but does not specify how the starting point for computing the reduction must be computed, a city council interpretation that the starting point computation may include approved but not yet constructed parking spaces is within the city’s interpretive discretion under ORS 197.829. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where an intergovernmental agreement governs until certain recommendations have been implemented, and also requires that those recommendations be implemented within a reasonable time, it is inconsistent with the terms of the agreement for a local government to

unilaterally declare that the agreement no longer governs after four years, whether or not the recommendations have been implemented. *City of Salem/Marion County v. City of Keizer*, 36 Or LUBA 262 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county may adopt its own interpretation of “public need” as that term is used in its comprehensive plan, and that interpretation is not constrained by judicial interpretation of similar, but unrelated, statutory standards. *Turrell v. Harney County*, 36 Or LUBA 244 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm as not clearly wrong an interpretation that commercial uses not otherwise listed as allowed uses in a university district are allowed when they are uses “customarily associated” with universities and thus fall within the definition of a use expressly allowed in the district. *Brome v. City of Corvallis*, 36 Or LUBA 225 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is within a city council’s interpretive discretion under ORS 197.829 to interpret local design guidelines granting the city authority to impose conditions or require changes to construction proposals to meet those design guidelines to also permit the city to deny an application that does not meet those guidelines. *Barnard Perkins Corp. v. City of Rivergrove*, 36 Or LUBA 218 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code does not dictate how rear and front lot lines are to be identified, a city council is within its interpretive discretion under ORS 197.829 in requiring that building orientation be considered. *Barnard Perkins Corp. v. City of Rivergrove*, 36 Or LUBA 218 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. An argument that an uninterpreted clause of a local land use regulation conflicts with the city’s express interpretation of another clause of that regulation is more appropriately framed as an argument that the city’s interpretation is inconsistent with the terms of the regulation, not that the city’s interpretation is inadequate for review. *McElroy v. City of Corvallis*, 36 Or LUBA 185 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local provision allows the planning commission to “consider the redesign” of a development plan “in whole or in part” when the applicant petitions for modification of the development plan, a city council interpretation of that provision to allow the planning commission to address modifications beyond those requested by the applicant is not clearly wrong. *McElroy v. City of Corvallis*, 36 Or LUBA 185 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county’s implicit interpretation of a local provision is inadequate for review where the county’s unambiguous understanding of the meaning of the provision is not discernible in the manner in which it applies that provision. LUBA cannot review a putative interpretation of a local provision where, because of the brevity of the county’s findings and the nonspecific terms

of the local provision, it cannot determine which of several plausible interpretations the governing body might have intended. *Eddings v. Columbia County*, 36 Or LUBA 159 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city comprehensive plan provision requires a site-specific investigation of natural hazards “prior to development,” the city is within the discretion afforded it by ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 504, 836 P2d 710 (1992), in interpreting that provision to apply at the stage where the city is evaluating a specific proposal for development such as a building permit. *Jebousek v. City of Newport*, 36 Or LUBA 124 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Exercise of LUBA’s authority under ORS 197.829(2) to interpret local land use law in the first instance is not appropriate where the relevant code provision prohibiting reduction of acreage available for farm use could refer to reduction (1) of acreage on adjacent lands or (2) of acreage on the subject property that is available for use in conjunction with farm uses on adjacent lands. Where both interpretations are plausible and it is disputed factually whether the relevant lands could be used in conjunction with adjacent lands, a remand to the county to render its interpretation in the first instance is appropriate. *DLCD v. Jackson County*, 36 Or LUBA 88 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city council interprets a code standard that excuses a permit applicant from providing required parking where “special circumstances exist constituting a hardship” as being satisfied where the cost of providing the one additional parking site that is possible on the property will constitute an “economic hardship out of proportion to the gain of parking spaces,” and petitioner does not specifically challenge the city council’s findings, LUBA will affirm that interpretation unless it exceeds the city’s interpretive discretion under ORS 197.829(1). *Port Dock Four, Inc. v. City of Newport*, 36 Or LUBA 68 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county code “stability” standard that does not implement the statutory nonfarm use “stability” standard is not subject to case law interpreting the statutory “stability” standard, but such a code “stability” standard necessarily connotes a temporal period and a scope of causative impact for analysis. However, a county’s interpretation of the local “stability” standard as focusing on short-term effects and direct impacts rather than long-term and cumulative impacts is not clearly wrong and therefore must be affirmed by LUBA. *Ray v. Douglas County*, 36 Or LUBA 45 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A planning director’s letter that does no more than repeat the planning commission’s condition of approval and speculate as to how that condition might be applied is not, under local zoning code, an “action or ruling” that may be appealed to the planning commission. *Schultz v. City of Forest Grove*, 35 Or LUBA 712 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where provisions allowing enforcement of the city’s ordinance only specifically authorize judicial remedies, the city’s interpretation of the enforcement provisions as allowing the city to conduct quasi-judicial proceedings to determine nonconforming use status is inconsistent

with the terms of that provision and not entitled to deference under *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992), or ORS 197.829(1). *Dept. of Transportation v. City of Mosier*, 35 Or LUBA 701 (1999).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA owes no deference to a county’s interpretation of ORS 215.130, governing nonconforming uses, or ordinance provisions that implement the statute. *Marquam Farms Corp. v. Multnomah County*, 35 Or LUBA 392 (1999).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the zoning ordinance allows a variance from its standards when those standards create a hardship due to one or more defined conditions, a hearing officer errs in requiring the applicant to demonstrate hardship in addition to those stated in the defined conditions. *Kelley v. Clackamas County*, 35 Or LUBA 215 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation of the terms “top of the nearest clearly defined bank” to mean the point where the angle of slope decreases rather than the top of the nearest ridge is within the range of plausible meanings denoted by the terms of that provision, and thus is not clearly wrong. *Dodds v. City of West Linn*, 35 Or LUBA 101 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation of its zoning ordinance as requiring conditional use approval for a towing yard as an “other industrial use” will be sustained where towing yards are not listed as an outright permitted use and the zoning code does not allow uses that are similar to outright permitted uses as permitted uses. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council interpretation of the term “flood” as being limited to the “base flood” or 100-year flood must be sustained by LUBA where the stated objectives and introductory language of the zoning code are consistent with the narrow interpretation. *Visher v. City of Cannon Beach*, 35 Or LUBA 74 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation of a comprehensive plan requirement for “small lot” to be met by a lot size of 10,000 square feet is within the city council’s interpretive discretion. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county interpretation of a code provision that allows smaller lot sizes provided certain road improvements are in place as also allowing smaller lot sizes so long as the number of residences is restricted until road improvements are made is clearly wrong. *DLCD v. Tillamook County*, 34 Or LUBA 586 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government does not expressly interpret a code provision, but adopts findings that are sufficiently detailed to demonstrate that it interprets the provision to require evaluation of the subject property rather than surrounding properties, LUBA will defer to that interpretation. *Rouse v. Tillamook County*, 34 Or LUBA 530 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a local government’s broad interpretation of the term “transportation terminal” as including “airports” and “airport related uses” where the interpretation is not inconsistent with the text, purpose or policy of the zoning ordinance. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA cannot determine whether inadequate findings are “clearly supported” by the record under ORS 197.835(11)(b) where the local provision to which the findings are directed is subject to numerous interpretations and the decision does not contain an adequate interpretation of that local provision. LUBA will not both fashion an interpretation of a local provision and then review the record for evidence clearly supporting findings of compliance with that provision, as interpreted. *Doob v. City of Grants Pass*, 34 Or LUBA 480 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a necessary interpretation of a local ordinance is absent or inadequate, LUBA will decline to interpret the local provision in the first instance, pursuant to ORS 197.829(2), when multiple interpretations are possible, and neither the county nor the applicant files a response brief. *Wodarczak v. Yamhill County*, 34 Or LUBA 453 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a petitioner at LUBA challenges an interpretation that first appeared in the challenged decision, petitioner need not have raised an issue concerning that interpretation during the local proceedings. *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Because a county’s interpretation of its code to allow deferral of compliance with an approval criterion to a later stage with no opportunity for public hearing is contrary to ORS

197.763(2) and 215.416, LUBA owes that interpretation no deference under ORS 197.829(1). *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code provision that imposes different standards depending on how many “functions” the street supports is ambiguous. A county interpretation that equates “function” with the number of units that use the street for “access” rather than the number of units that “border” the street is a plausible interpretation. *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county adopts the comprehensive plan of a city pursuant to an intergovernmental agreement, LUBA will not defer to the county’s interpretation of the city’s plan. *Trademark Construction, Inc. v. Marion County*, 34 Or LUBA 202 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is not required to defer to an interpretation by a hearings officer. Thus, the proper standard of review is not whether the hearings officer’s interpretation is contrary to the ordinance’s express terms or policy, but rather whether that interpretation is reasonable and correct. *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government fails to adopt a needed interpretation of a land use ordinance, LUBA may interpret the ordinance on appeal. LUBA will do so where the facts are undisputed, a pure question of law is presented and the parties adequately address the interpretive issue in their briefs. *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government may change a prior interpretation that a plan provision is not an approval criterion and apply that plan provision as an approval criterion to a request for permit approval. *Holland v. City of Cannon Beach*, 34 Or LUBA 1 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. ORS 227.178(3) does not prevent a city from adopting an interpretation of a comprehensive plan that is different than the interpretation that was in effect on the date the permit application was submitted, and applying that new interpretation to the permit application. *Holland v. City of Cannon Beach*, 34 Or LUBA 1 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When a local government interprets its ordinance so that it effectively interprets the meaning of the terms “standards and criteria” in ORS 227.178(3), LUBA is not required to give that interpretation any deference. The appropriate standard of review in that instance is whether the local government’s interpretation is reasonable and correct insofar as it interprets or applies ORS 227.178(3). *Holland v. City of Cannon Beach*, 34 Or LUBA 1 (1998).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. LUBA is required to defer to a local governing body's implied interpretation of a local ordinance as long as the implied interpretation is adequate for review under ORS 197.829(2). *Bradbury v. City of Bandon*, 33 Or LUBA 664 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the purpose of a local provision is unclear and subject to numerous interpretations, LUBA will decline to interpret the provision in the first instance. *Bradbury v. City of Bandon*, 33 Or LUBA 664 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A finding need not include an express interpretive statement about the meaning of a code standard as long as the local government's interpretation of the standard can be discerned from the way the standard is applied. *Port Dock Four, Inc. v. City of Newport*, 33 Or LUBA 613 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county may regulate or define uses allowed under ORS 215.283(2) as long as it does not define those uses more expansively than permitted by state law. *R/C Pilots Association v. Marion County*, 33 Or LUBA 532 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county may interpret its local codification of nonfarm uses allowed in EFU zones more restrictively than state law requires. Such a more restrictive interpretation is not contrary to ORS 215.283(2)(d) and will be affirmed by LUBA where it is not so inconsistent with the zoning ordinance as to be clearly wrong. *R/C Pilots Association v. Marion County*, 33 Or LUBA 532 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That a parcel may be separately transferable under ORS 92.017 does not determine whether the parcel may be separately developed. *Eagle Point Development v. City of Shady Cove*, 33 Or LUBA 509 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a city's resolution of a conflict between the city's comprehensive plan text and its comprehensive plan map in favor of the plan text where that interpretation fulfills a plan policy and is as consistent with the language and intent of the plan as the alternative interpretation. *Hough v. City of Redmond*, 33 Or LUBA 483 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local ordinance allows a community center in an open space zone as a

conditional use, the city's interpretation that a community center is a compatible use in that zone is not clearly wrong. *Risher v. City of Portland*, 33 Or LUBA 479 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where approval criteria include conformance with a transportation element of a local comprehensive plan that has both mandatory and aspirational standards, the local government's interpretation that the aspirational standards are not specific approval criteria is not clearly wrong. *Risher v. City of Portland*, 33 Or LUBA 479 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will not defer to city's interpretation that a city code requirement for "usable outdoor recreation space * * * for the shared or common use of all the residents" is satisfied by balconies or by private patios and decks, where the code requires that such balconies, patios and decks be "designed to provide privacy." *Dodds v. City of West Linn*, 33 Or LUBA 470 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA defers to a county's interpretation of "flag lot" as used in local code, even if that interpretation can only be inferred from its actions, where the county's implicit interpretation is not clearly wrong. *Central Bethany Dev. Co. v. Washington County*, 33 Or LUBA 463 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city interprets its code erosion control standards as imposing construction guidelines, not approval standards requiring feasibility findings, LUBA must defer to that interpretation unless it is clearly wrong. *Arnett v. City of Lake Oswego*, 33 Or LUBA 384 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A code interpretation by a hearings officer is instructive and may be considered in determining if the county's interpretation is reasonable and correct. *Central Oregon Cellular, Inc. v. Deschutes County*, 33 Or LUBA 345 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Mandatory code requirements cannot be subverted by a local government interpretation. *DLCD v. Tillamook County*, 33 Or LUBA 163 (1997).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a city’s interpretation of a variance criterion is not inconsistent with the purpose and policy of the applicable chapter of the local code, as stated in that chapter’s intent and purpose statement, the city’s interpretation is not indefensible. *Shaffer v. City of Salem*, 33 Or LUBA 57 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In the context of a land use application, the county’s interpretation of the code term “owner” to mean “authorized agent” is not indefensible, and LUBA will defer to it under ORS 197.829(1). *Nash v. Crook County*, 33 Or LUBA 51 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will not defer under ORS 197.829(1) to implicit interpretations of the local zoning ordinance. *Nash v. Crook County*, 33 Or LUBA 51 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the county determines that an apparent conflict exists between state statute and county code regarding whether livestock sales and shows are permitted on EFU land, LUBA will defer to the county’s decision to clarify the nature of the use through a quasi-judicial use classification hearing. *Collins v. Klamath County*, 32 Or LUBA 338 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the county interprets “high value farm land” for purposes of its ordinance to mean “predominantly high value farm land,” and concludes that because the subject property consists of predominantly non-high value farmland, a golf course is permitted as a conditional use, LUBA will defer to the county’s interpretation of its own code. *Just v. Linn County*, 32 Or LUBA 325 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In the absence of a reviewable interpretation concerning the applicability of a possibly relevant zoning code provision, LUBA will remand for an interpretation. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The county is not bound by a hearings officer’s previous legal interpretation of a local ordinance where the county determines that the earlier interpretation is incorrect. *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA owes no deference to the county’s “implicit” interpretation of a local ordinance. *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In reviewing a hearings officer’s decision, where LUBA is unable to fathom the meaning of a local ordinance and no interpretation is provided by the hearings officer, LUBA will give the county the opportunity to interpret the code in the first instance. *Jackson County Citizens*

League v. Jackson County, 32 Or LUBA 212 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Since the rule of deference to a local government’s interpretation of its plan and land use regulations, which is codified in ORS 197.829(1), does not apply to our review of local government decisions not made by the governing body, the exceptions to the rule, set forth in ORS 197.829(1)(a) to (d), also do not apply. *ODOT v. Clackamas County*, 32 Or LUBA 118 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will affirm the city planning bureau’s determination that a proposed probation/parole office is an office use, permitted of right in a General Commercial zone, where that determination is reasonable and correct. *North Portland Citizens v. City of Portland*, 32 Or LUBA 70 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to the county governing body’s interpretation of a plan policy as being applicable when development approval is sought rather than when the plan map is amended. *Helvetia Community Assoc. v. Washington County*, 31 Or LUBA 446 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local ordinance states that grading operations will not be permitted in open drainageways unless the building official finds that such an operation “will not adversely affect the existing and ultimate developments or land adjacent to a drainageway,” the city’s interpretation of that language to require consideration of “existing and ultimate developments *on* land adjacent to a drainageway” is not so wrong as to be beyond a colorable defense. *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When a city’s final decision does not contain an interpretation of a comprehensive plan provision, LUBA need not remand for an interpretation, but may itself determine whether the city’s decision is correct. *Stewart v. City of Brookings*, 31 Or LUBA 325 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Given the express language in Goal 3 that future availability of water for irrigation must be considered in evaluating suitability of soils for agricultural uses, the county’s interpretation that it need not consider potential availability of irrigation in determining soil suitability is incorrect, and LUBA will not defer to that interpretation. *Doob v. Josephine County*, 31 Or LUBA 275 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local comprehensive plan provision is designed to implement, and in fact essentially mirrors, the requirements for compliance with Goal 3, LUBA owes deference to the local government’s interpretation only to the extent that interpretation is consistent with Goal 3. *Doob v. Josephine County*, 31 Or LUBA 275 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. Under ORS 197.829(2), in the absence of local findings, LUBA may interpret the applicability of the city’s comprehensive plan provisions in the first instance. *Friends of Indian Ford v. Deschutes County*, 31 Or LUBA 248 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under ORS 197.829(2), enacted in 1995, LUBA is not required to remand decisions for local government interpretations of local provisions when LUBA is able to make the necessary interpretations. *Friends of Metolius v. Jefferson County*, 31 Or LUBA 160 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), and ORS 197.829(1), LUBA must defer to local government interpretations of traditional variance standards, including those made without reference to traditional strict interpretations. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The informal adoption by a statement in a quasi-judicial decision of a definition of the term “firearms training facility,” which term is found in both a state administrative rule and the county’s zoning ordinance, does not constitute the amendment of an acknowledged land use regulation. *J.C. Reeves Corp. v. Washington County*, 31 Or LUBA 115 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s conclusion that one term in its code can be used to define a somewhat different term is within its interpretive discretion, and is not so wrong as to be beyond a colorable defense. *Winkler v. City of Cottage Grove*, 30 Or LUBA 351 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA cannot defer to a local government’s interpretation of its own ordinance when it cannot discern what the interpretation is, and will not exercise its discretion under ORS 197.829(2) to interpret a county provision in the first instance where the purpose of the provision is unclear and subject to numerous interpretations. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Because relevant state statutes remain applicable to local land use decisions after acknowledgment of local regulations, a local government “legislative interpretation” of a statute does not supersede the statute itself. *Ramsay v. Linn County*, 30 Or LUBA 283 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. If the local government’s interpretation of its own code regarding the scope of a proposed partition contravenes the express language of the code, LUBA will not defer to that interpretation. *Tognoli v. Crook County*, 30 Or LUBA 272 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Even if an interpretation of a local ordinance is colorable on its face, it may be inconsistent with the express language, purpose and policy underlying the ordinance and expressed

in a comprehensive plan. In such cases, LUBA cannot affirm the local government's interpretation under ORS 197.829(1)(a) to (c). *DLCD v. Tillamook County*, 30 Or LUBA 221 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. City's interpretation of local wetland mitigation policy to "preserve wetland habitat" as allowing replacement of .05 acres of existing wetland with a larger wetland area is not clearly wrong and must be affirmed. *Noble v. City of Fairview*, 30 Or LUBA 180 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. It is within the county's interpretive discretion to find that a code provision protecting agricultural land for farm use conflicts with a plan policy that certain land is not suitable for agricultural production and is committed to residential development. *Reeves v. Yamhill County*, 30 Or LUBA 135 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under ORS 197.829(2), in the absence of a local interpretation, LUBA may interpret an ordinance to determine whether a local government decision is correct. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The city was clearly correct in classifying a proposed recycling processing center as a "waste and/or recycling transfer operation" which is an allowed conditional use under local ordinance. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. While ORS 197.829(2) allows LUBA to interpret local land use regulations in the absence of interpretations by the local government, LUBA need not search the record, or make interpretations or draw conclusions that are not clearly evident. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), LUBA will defer to a city's interpretation that a comprehensive plan provision setting residential densities establishes a maximum density for specific zones which can be reduced in particular circumstances. *Holland v. City of Cannon Beach*, 30 Or LUBA 85 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A comprehensive plan policy limiting the clearing of vegetation on Neabeack Hill to that which is "necessary for housing, roads, and utilities" does not require that the city reduce the permitted density of a proposed planned unit development to preserve more natural vegetation than necessary for development consistent with the applicable zoning. *Friends of Neabeack Hill v. City of Philomath*, 30 Or LUBA 46 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the city's application of a comprehensive plan policy intended to preserve vegetation to a proposed planned unit development actually ensures more preservation of

vegetation than required by the express language of the policy, the city's interpretation of the policy is not clearly wrong. *Friends of Neabeack Hill v. City of Philomath*, 30 Or LUBA 46 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. To challenge successfully the city's interpretation of a comprehensive plan format and provisions and the city's conclusion that two plan provisions are not land use regulations, a petitioner must establish that the city's interpretation of the contested plan provisions is clearly wrong. *Fraser v. City of Joseph*, 30 Or LUBA 13 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioners contend the governing body failed to follow procedures arguably required by the local code for making the challenged legislative land use decision, LUBA must defer to the governing body's interpretation of the code and cannot interpret the code provisions in the first instance. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 429 (1995).

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

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will not defer to a local government's interpretation of a state regulation. *Testa v. Clackamas County*, 29 Or LUBA 383 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a local governing body's interpretation of Standard Industrial Code Manual provisions incorporated into the local government's own zoning ordinance, unless that interpretation is contrary to the express words, purpose or policy of the local enactment or to a state statute, statewide planning goal or administrative rule which the local enactment implements. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Although LUBA owes no deference to a hearings officer's interpretation of a local enactment, LUBA may remand a challenged decision in cases where the interpretation at issue is not explained in the findings or differs from an earlier interpretation, in order to give the hearings officer an opportunity to interpret the local enactment in the first instance. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. If the local governing body’s interpretation of its comprehensive plan as not already designating the subject property as a 1B aggregate resources site, or providing a method of doing so without amending the acknowledged plan, is not clearly wrong, LUBA will defer to the governing body’s interpretation. *O’Rourke v. Union County*, 29 Or LUBA 303 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local code specifically requires the application of a historic landmark designation to be consistent with comprehensive plan historic preservation policies, but does not indicate any plan policies are applicable to decisions on permits for demolition of property subject to the historic landmark designation, the local governing body is not clearly wrong in interpreting the plan and code to provide that no plan policies are applicable to its review of such a demolition permit application. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where an ordinance changing the plan and zone designations of the subject property provides the property will revert to its former designations if a final order denying a conditional use permit (CUP) for a mobile home park is issued, the local governing body acts within its interpretive discretion in deciding the contingency is not met when LUBA remands a local government decision approving a CUP for a mobile home park and the local government does not take further action on that application. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local governing body acts within its interpretive discretion in interpreting a code conditional use permit standard regarding feasibility of meeting “projected increased demand” for school facilities to refer to current demand, plus demand from other developments that have received final approval and the demand created by the proposed development, and not to include demand from future permitted development of residentially zoned land. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where determining whether a notice of intent to appeal was timely filed under ORS 197.830(3) depends on determining which code notice of hearing provision applied to the local proceeding, and LUBA can infer from the challenged decision which notice provision the local governing body believes governs the local proceeding and agrees with that interpretation, even without the deference required by *Clark*, LUBA is not required to remand the decision for the governing body to make its interpretation explicit. *Orenco Neighborhood v. City of Hillsboro*, 29 Or LUBA 186 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a code contains both a provision governing the expiration of quasi-judicial land use approvals generally and a provision specifically governing the expiration of planned development approvals, the local governing body is within its discretion under ORS 197.829 and *Clark* in interpreting the code to mean the expiration of planned development approvals is governed *only* by the specific code provision. *ONRC v. City of Oregon City*, 29 Or LUBA 90

(1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the code provides “if no extensions are granted, the authorization shall expire,” the local governing body is within its discretion under ORS 197.829 and *Clark* in interpreting this provision to mean that if an extension is requested prior to the expiration of the approval period, the approval does not expire while local government review of the extension request is pending. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. If a code includes provisions for extending planned development approvals and for requesting changes in approved final development plans, the local governing body is within its discretion under ORS 197.829 and *Clark* in interpreting these provisions together to mean if a change in an approved final development plan is requested before the original approval expires, the approval does not expire while the modification application is being processed, and a separate extension application is not necessary. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA owes no deference to a hearings officer’s interpretation of a local code. *Walker v. Clackamas County*, 29 Or LUBA 22 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Even under the highly deferential review standard imposed by ORS 197.829 and *Clark v. Jackson County*, 313 Or 508, 514-15, 836 P2d 710 (1992), a local governing body cannot interpret an “exceptional or extraordinary circumstances * * * which do not apply generally to other properties in the same vicinity” variance standard to include any circumstance that does not apply uniformly to all, or nearly all, properties in the vicinity. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is required to defer to a local governing body’s interpretation of any enactment which the governing body of that jurisdiction adopted, regardless of whether the governing body of another jurisdiction also adopted the same enactment. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA’s review of a hearings officer’s interpretation of a local code provision is to determine whether the interpretation is reasonable and correct. *Huiras v. Clackamas County*, 28 Or LUBA 667 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In reviewing a decision adopted by a local governing body, LUBA must review the governing body’s interpretation of local code provisions and may not interpret the local code in the first instance, unless there is “no possible rational dispute” regarding the correct interpretation. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where individual guidelines made applicable by an overlay zone are expressed in nonmandatory terms, a governing body is well within its interpretive discretion in determining compliance with such guidelines is not required, even where the code provides that overlay zone provisions supersede provisions of the base zone. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a governing body’s interpretation of a traditional local code “unnecessary hardship” variance standard, where the governing body determines that so long as some beneficial use of the subject property could be established, the unnecessary hardship standard is not satisfied. *Duck Delivery Produce v. Deschutes County*, 28 Or LUBA 614 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council’s interpretation of a city code “unreasonable hardships or practical difficulties” variance standard, as requiring that it be “extremely difficult” to use the subject property for a proposed concrete operation without the requested variance, is not clearly wrong and, therefore, must be affirmed. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the challenged decision is adopted by the governing body, LUBA must grant considerable deference to the governing body’s interpretations of the local code and cannot interpret the local code in the first instance. *Friends of the Metolius v. Jefferson County*, 28 Or LUBA 591 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is not required to defer to a hearing’s officer’s interpretation of the local code under ORS 197.829 or *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992). Rather, LUBA’s review of a hearings officer’s interpretation is to determine whether the interpretation is reasonable and correct. *Ellison v. Clackamas County*, 28 Or LUBA 521 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government acts within its interpretational discretion in construing local code provisions that treat “contiguous” parcels in “common ownership” as a single unit of land as not including parcels in common ownership which meet only at a common corner and share no common sides. *Tognoli v. Crook County*, 28 Or LUBA 527 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government acts within its interpretive discretion in interpreting comprehensive plan policies requiring “protection and preservation” of certain natural resources together with other plan policies calling for construction of a particular roadway to allow construction of the roadway, provided impacts on the natural resources are limited. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local government determined comprehensive plan objectives are

mandatory approval standards in a recently appealed local decision, it may not later determine that plan objectives are mere guidelines and not mandatory approval standards in a different decision appealed to LUBA, in the absence of some explanation for the disparity. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the code does not specifically require that the county hearings officer make the initial interpretation concerning whether a nonconforming use exists and the nature and extent of that nonconforming use at the time restrictive zoning was applied, the board of commissioners is not clearly wrong in interpreting the code to grant the planning director authority to make such initial determinations. *Spurgin v. Josephine County*, 28 Or LUBA 383 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA owes no deference to a local government’s interpretation of an administrative rule promulgated by a state agency. *Sensible Transportation v. Washington County*, 28 Or LUBA 375 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a local government’s interpretation that the term “development” used in the local code does not include zone changes. *Neuman v. City of Albany*, 28 Or LUBA 337 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When reviewing an interpretation of a local enactment by a local decision maker other than the local governing body, LUBA’s acceptance or rejection of the interpretation is determined solely by whether the interpretation is right or wrong. *Gage v. City of Portland*, 28 Or LUBA 307 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under ORS 197.829, LUBA is required to afford deference to local interpretations of local comprehensive plans and land use regulations only when those interpretations are made by the local governing body. *Gage v. City of Portland*, 28 Or LUBA 307 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Code provisions that provide interim resource protection to property not on a local government’s acknowledged Goal 5 resource inventories, until the Goal 5 planning process can be carried out, do not implement Goal 5. Therefore, local interpretations of such code provisions are not subject to reversal by LUBA under ORS 197.829(4). *Gage v. City of Portland*, 28 Or LUBA 307 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The scope and proper construction of the term “commercial activities that are in conjunction with farm use,” used in ORS 215.213(2)(c) and 215.283(2)(a), is a question of state law. LUBA is not required to defer to a local government hearings officer’s understanding of the scope of that term. *City of Sandy v. Clackamas County*, 28 Or LUBA 316 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That LUBA may consider a statewide planning goal that is implemented by a particular plan or code provision, in determining whether the local government’s interpretation of the plan or code provision should be affirmed under ORS 197.829(4), does not make that goal an approval standard for decisions made under an acknowledged plan and land use regulations. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is not required to give a planning director’s interpretation of local regulations the deference LUBA must afford to a governing body’s interpretation of local regulations. Rather, LUBA reviews a planning director’s interpretation to determine whether that interpretation is reasonable and correct. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local governing body is not entitled to interpretive deference under ORS 197.829 and *Clark v. Jackson County* when interpreting statutory requirements for home occupations. *Holsheimer v. Columbia County*, 28 Or LUBA 279 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local code creates a process for the submittal and review of an applicant’s “development impact statement” (DIS) as part of preliminary subdivision plat approval, the local governing body has considerable discretion in interpreting the role of the DIS process and must determine, in the first instance, whether the DIS content requirements are mere requests for information or impose substantive approval standards. *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a challenged city council decision approving the provision of city sewer and water services outside city limits does not interpret arguably relevant comprehensive plan provisions with regard to whether they are approval criteria for the challenged decision, LUBA must remand the decision to the city to adopt such interpretations, before LUBA can determine whether the challenged decision is a land use decision subject to LUBA review. *Fraser v. City of Joseph*, 28 Or LUBA 217 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA owes no deference to interpretations of local code provisions adopted by local decision makers other than the governing body. *Derry v. Douglas County*, 28 Or LUBA 212 (1994).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation of a code “compatibility” standard as not requiring consideration of “view impacts” is not “clearly wrong” and will be sustained by LUBA. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county adopts an urban growth management agreement requiring incorporation of city zoning ordinance and comprehensive plan provisions into the county’s zoning ordinance and comprehensive plan, with regard to unincorporated land within the city’s UGB, LUBA will extend the deference required by ORS 197.829 and *Clark v. Jackson County* to the county governing body’s interpretation of city plan and zoning ordinance provisions when the county makes a land use decision concerning property within the UGB. *Mazeski v. Wasco County*, 28 Or LUBA 178 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county governing body’s interpretation of the term “severe geologic hazard,” as used in its comprehensive plan, is not so wrong as to be beyond colorable defense, LUBA will defer to it. *Mazeski v. Wasco County*, 28 Or LUBA 178 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where local conditional use approval standards do not specifically refer to impacts on property values, but rather to compatibility with “uses” and “land use patterns” and changes in “accepted farm or forest practices” or their cost, a local governing body is within its discretion under ORS 197.829 in interpreting such standards not to require consideration of a proposed conditional use’s impact on property values. *Tucker v. Douglas County*, 28 Or LUBA 134 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county governing body’s interpretation that an otherwise applicable code permit standard requiring “Class I-IV soils [to] be preserved and maintained for farm use” is not applicable to land for which an exception to Statewide Planning Goal 3 (Agricultural Lands) has been adopted as part of the acknowledged county comprehensive plan, is not “clearly wrong,” and is within the governing body’s discretion under ORS 197.829. *Reeves v. Yamhill County*, 28 Or LUBA 123 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In reviewing a local government hearings officer’s interpretation of a land use regulation, LUBA determines whether the interpretation is reasonable and correct. The deference to a local governing body interpretation required by ORS 197.829 does not apply to interpretations by hearings officers. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a challenged decision was not adopted by the governing body of the local government, LUBA owes no deference to the interpretations of local enactments expressed in that decision. *Pickrell v. City of Portland*, 28 Or LUBA 103 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A city council acts within its interpretive authority under ORS 197.829 in applying a code provision as a mandatory approval standard, notwithstanding its use of the word “should.” So long as the city makes it clear that it does interpret the code provision as a mandatory approval standard, it need not explain why in its decision. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under ORS 197.829, LUBA is required to defer to a local governing body’s interpretation of its own enactment, unless that interpretation is contrary to the express words, purpose or policy of the local enactment or to a state statute, statewide planning goal or administrative rule which the local enactment implements. *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. If a local government is presented with a plan or land use regulation provision that must be interpreted, and there is a reasonable interpretation that is *consistent* with the “state statute, land use goal or rule the comprehensive plan provision or land use regulation implements,” that interpretation may not be rejected by the local government in favor of an interpretation that is *inconsistent* with those statutes, goals or rules. *Historical Development Advocates v. City of Portland*, 27 Or LUBA 617 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. ORS 197.829(4) was not adopted to allow LUBA to reconsider the propriety of the original acknowledgment of comprehensive plans and land use regulations. Identification of an allegedly incorrect *interpretation* of such acknowledged comprehensive plan or land use regulation provisions is a condition precedent for invoking review under ORS 197.829(4). *Historical Development Advocates v. City of Portland*, 27 Or LUBA 617 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where nothing in its comprehensive plan or code requires that a particular level of service be maintained at affected street intersections at all times, the local government’s interpretation of its plan and code as allowing short traffic system failures for infrequent, large, special events is not clearly wrong, and LUBA will defer to it. *Heine v. City of Portland*, 27 Or LUBA 571 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a document was originally drafted by state agency staff, but was never adopted by that agency as an administrative rule, and is applicable to a challenged local government decision only because it is incorporated by reference into the local code, under ORS 197.829 LUBA is neither required nor allowed to give deference to an interpretation of that document by an agency staff member. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code provides that a planning commission decision becomes final 10 days after “submittal” of the written decision to the clerk of the governing body, the local government is not clearly wrong in interpreting “submittal” to the clerk to mean “receipt” by the clerk, and its interpretation will be sustained. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government acts within its interpretive discretion in interpreting a plan policy that “residential development should only be encouraged” in certain areas not to be an approval standard for individual development applications. *Furler v. Curry County*, 27 Or LUBA 497 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. When LUBA reviews land use decisions for compliance with relevant approval standards, it does not matter whether the challenged decision is consistent with prior decisions, so long as the decision correctly interprets and applies the applicable standard. *Furler v. Curry County*, 27 Or LUBA 497 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government’s interpretation of the term “motel,” as defined by local ordinance, to include a particular development is not contrary to the express words, policy or purpose of that ordinance, LUBA will defer to the local government’s interpretation. *Kaady v. City of Cannon Beach*, 27 Or LUBA 464 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the applicability of local comprehensive plan or land use regulation provisions is ambiguous, the local government is entitled to considerable deference in determining their applicability. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code provision does not explicitly state the requirements listed thereunder for a complete development application are “jurisdictional,” the local government’s interpretation of the code provision as imposing procedural rather than jurisdictional requirements is not inconsistent with the express words, purpose or policy of the code and, therefore, must be affirmed. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government acts within the interpretive discretion afforded by ORS 197.829 in finding a code requirement for a statement of the nature of the applicant’s interest in the subject property is satisfied where the application states the applicant is the “future property owner” and there is evidence in the record that the applicant has acquired or will acquire the property. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. A local government is within its interpretive discretion in counting an access driveway separated by a median into two one-way driveways as two access points, for purposes of satisfying the number of access points required by the local code. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. That other inapplicable sections of the local code permit one-way driveways with a minimum 15-foot pavement width provides no basis for allowing 15-foot-wide paved driveways where the applicable code section unambiguously requires a 24-foot pavement width. Such an interpretation is clearly wrong, and exceeds the local government’s interpretive discretion. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local code explicitly establishes a right to a local appeal only for decisions made pursuant to certain procedures set out in the code, a the local government’s interpretation that no local appeal is available if the decision sought to be appealed was not made through those procedures is not clearly wrong, and LUBA will defer to it. *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The meaning of the term “standards and criteria” in ORS 227.178(3) is a question of state law, and a city’s interpretation and application of this term does not bind LUBA. The role of the term “standards and criteria” in ORS 227.178(3) is to assure both proponents and opponents of an application that the substantive factors that are actually applied and that have a meaningful impact on a decision permitting or denying an application will remain constant throughout the proceedings. *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under ORS 197.829(4), if a comprehensive plan provision or land use regulation is clearly designed to implement a statewide planning goal or goals, a local government may not interpret such a plan provision or land use regulation in a manner inconsistent with the goals it implements. *DLCD v. City of Donald*, 27 Or LUBA 208 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a Transitional Timber zone provides that uses of land “not specifically mentioned” in that zone are prohibited, and the principal uses permitted outright in the zone are resource and resource-related uses, not commercial uses, LUBA will defer to the local government’s interpretation that the zone does not allow parking, storage and maintenance of a commercial truck. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A comprehensive plan policy that “urban services shall only be established within recognized urban growth boundaries” implements Goals 11 and 14. Because Goals 11 and 14 prohibit the extension of urban level services outside of urban growth boundaries, LUBA will not defer to a local government interpretation of that plan policy as allowing extension of service from an urban sewage treatment plant to a rural area. ORS 197.829(4). *DLCD v. Fargo Interchange Service District*, 27 Or LUBA 150 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code contains a variety of arguably relevant provisions that equally support different interpretations, the selection of an interpretation is for the local government to make. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local code provides that nonconforming use rights are lost if the site of a nonconforming use is “vacant” for two continuous years, and also provides that words used in the code have their normal dictionary meaning, the local government may interpret “vacant” to mean “free from activity” consistent with the nonconforming use rights, but cannot embellish that definition by adding a requirement for the absence of “a bona fide effort to provide goods and services for profit.” *Rhine v. City of Portland*, 27 Or LUBA 86 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to local government decisions giving different interpretations to the same language appearing in different sections of its code, where there are related code provisions that provide some justification for the different construction of such identical code language. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government operates within its interpretive discretion under ORS 197.829 when it interprets a code requirement that a proposed conditional use “fully accords with all applicable standards of the County and State Laws or regulations” to be satisfied, where the applicant demonstrates during the local proceedings that there are “no unusual circumstances or conditions which would prevent [subsequent] issuance of required regulatory approvals.” *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government interpretation of its sign ordinance that regardless of whether a sign is an awning, fascia or other sign type, it is subject to certain measurement requirements, is not contrary to the express words, policy or context of the ordinance, and LUBA will defer to it. *Heath Northwest, Inc. v. City of Portland*, 26 Or LUBA 535 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under ORS 197.829, it is unclear whether LUBA is to defer to a local government interpretation of a prior local government decision or whether LUBA is required to determine whether the local government interpretation is reasonable and correct. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The noninterference standard of ORS 215.283(3)(b) applies directly to land in a county EFU zone, and EFU zone provisions implementing ORS 215.283(3)(b) may not be interpreted inconsistently with the statute. *DLCD v. Crook County*, 26 Or LUBA 478 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA may not interpret a local government’s enactments, in the first instance, to determine what constitutes the local approval standards for, and how those standards apply to, a challenged decision. Rather, LUBA is required to review the local government’s interpretation of its own enactments. *Rea v. City of Seaside*, 26 Or LUBA 444 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioners do not argue that a local code provision governing local appeal procedures implements some requirement imposed on the local government by a state statute, statewide planning goal or administrative rule, LUBA will defer to the local government’s interpretation of its code provision, unless that interpretation is clearly wrong. *Bjerk v. Deschutes County*, 26 Or LUBA 439 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government interpretation of a plan policy as governing how it inventories, plans and zones its forestland, and as not applying to a decision approving a non-forestland division and dwelling, will be sustained where the interpretation is consistent with the words and apparent purpose of the policy. *Draganowski v. Curry County*, 26 Or LUBA 420 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 1993 Oregon Laws, chapter 792, section 43, codifies *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), with the exception that LUBA is not required to defer to a local government’s interpretation of its regulations if that interpretation is contrary to a state statute, statewide planning goal or administrative rule which the regulations implement. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation of its code provisions on farm dwellings is within the interpretive discretion afforded local governments by *Clark v. Jackson County* and 1993 Oregon Laws, chapter 792, section 43, so long as its interpretation does not provide less protection to EFU-zoned land than what ORS 215.283(1)(f) and OAR 660-05-030(4) provide. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under Oregon Laws 1993, chapter 792, section 43(4), LUBA is not required to affirm a local government’s interpretation of its own code provision if that interpretation is “contrary to a state statute, land use goal or [administrative] rule that the [code provision] implements.” *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government

Interpretation. LUBA is required to defer to a local government's interpretation of its own ordinances, unless the interpretation is clearly contrary to the express words, policy or context of the enactment. *Lane v. City of Klamath Falls*, 26 Or LUBA 295 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. ORS 215.283(3)(d) must be independently applied to an application for division of EFU-zoned land and requires that the entire EFU-zoned parcel be found to be generally unsuitable for farm use, regardless of whether local regulations impose a more relaxed standard on homestead lot divisions. *Geiselman v. Clackamas County*, 26 Or LUBA 260 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government interprets a “situated upon generally unsuitable land” approval standard for nonforest dwellings and land divisions in a forest zone to require that the entire subject parcel be generally unsuitable for the production of farm or forest products, and that interpretation is not contrary to the express words, policy or context of that standard, LUBA will defer to the local government's interpretation. *Alexanderson v. Clackamas County*, 26 Or LUBA 209 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), there can easily be more than one affirmable local government interpretation of a particular code provision. Nevertheless, *Clark* does not allow a local government arbitrarily to vary its interpretation of an approval standard when acting on permit applications. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA cannot interpret a local government's ordinances in the first instance, but rather must review the local government's interpretation of its ordinances. Consequently, the failure of the local government to make the initial interpretation of local ordinance provisions is a basis for remand. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local code defines an accessory use or structure as one which is subordinate to and serves a principal structure or principal use, a local government is within its interpretive discretion under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), to require that the principal use or structure exist before an accessory structure or use may be approved. *McPeck v. Coos County*, 26 Or LUBA 165 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government's interpretation of its code that a retaining wall is not within the local code's definition of “building” is not clearly wrong, LUBA will defer to that interpretation. *Wood v. City of Lake Oswego*, 26 Or LUBA 121 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a question of proper interpretation of a comprehensive plan provision is raised during local proceedings, the interpretation required for LUBA review of the decision on

appeal must be provided in the decision. The local government may not supply the interpretation in its brief on appeal. *Eskandarian v. City of Portland*, 26 Or LUBA 98 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the challenged decision interprets a local code standard for nonforest dwellings to require that an entire parcel be generally unsuitable for farm or forest uses, and that interpretation is not clearly contrary to the words, policy or context of the code, LUBA will defer to it. *DLCD v. Lincoln County*, 26 Or LUBA 89 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under ORS 197.835(7)(a)(D) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), LUBA must defer to a local government’s interpretation of “applicable law” adopted by the local government, regardless of whether that applicable law is a zoning ordinance or conditions of approval imposed by a prior quasi-judicial order. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government’s interpretation of its own comprehensive plan that the introductory sections in the land use chapter are not independent approval standards is not clearly wrong, LUBA must defer to that interpretation. *Moore v. Clackamas County*, 26 Or LUBA 40 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a local government’s interpretation of a code requirement, that a PUD tentative plan covering a portion of property under single ownership be accompanied by a statement proving the entire property can be developed and used in accord with code standards, as requiring that the PUD not render the remainder of the property undevelopable. *McGowan v. City of Eugene*, 26 Or LUBA 9 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A county may interpret a comprehensive plan provision prohibiting plan map amendments designating “forest lands” for rural development as referring to the definition of “forest lands” contained in Goal 4 when the comprehensive plan provision was adopted. Such an interpretation would not allow development that would otherwise be prohibited by the current version of Goal 4 and, therefore, is not inconsistent with the current version of Goal 4. *Westfair Associates Partnership v. Lane County*, 25 Or LUBA 729 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government’s interpretation of a particular code provision is expressed in a motion to dismiss an appeal before LUBA, rather than in the challenged decision itself, LUBA is not required to defer to the local government’s interpretation. *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. The proper interpretation of state statutes is a question of law for LUBA to decide, and is not subject to the limitations that *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992),

places on LUBA's review of interpretations of local enactments. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Notwithstanding that LUBA may prefer a different interpretation of local code provisions, where the local decision maker's interpretation of the local code is not internally inconsistent and not clearly wrong, LUBA will defer to it. *DLCD v. Crook County*, 25 Or LUBA 625 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the challenged decision contains an interpretation of the local code that a particular standard is inapplicable to the proposed development, and that interpretation is not clearly contrary to the express words, policy or context of the local code, LUBA will defer to that interpretation. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government's interpretation of its own code, that a county department manager may initiate an application for development approval on behalf of the local government, is not clearly contrary to the express words, policy or context of the local code, LUBA will defer to it. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA owes local governments no deference in interpreting state law. However, where a number of the issues raised in the petition for review do not turn on interpretation of state law, the presence of questions of state law does not, alone, make a voluntary remand inappropriate. *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LUBA 558 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a challenged decision simply expresses a conclusion that the county court has discretion to act on a subdivision application without that application having first been acted on by the county planning commission, but does not identify the source of that discretion or interpret apparently relevant code provisions, the basis for the challenged decision is not sufficiently articulated for review, and the challenged decision must be remanded. *Larson v. Wallowa County*, 25 Or LUBA 537 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the challenged decision includes contradictory findings regarding compliance with an applicable local code approval standard, LUBA cannot interpret the standard itself, but rather must remand the decision to the local government to interpret the standard in the first instance. *Larson v. Wallowa County*, 25 Or LUBA 537 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local code states that "failure to comply with this subsection shall be a jurisdictional defect," and a local appellant fails to establish compliance with that subsection, the local government is free to interpret its code to require dismissal of the local appeal, and LUBA will defer to that interpretation. *DLCD v. Wasco County*, 25 Or LUBA 529 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a farm dwelling approval standard in a local code requires a county to consider the median size of commercial farms in a specific area, as reported by certain government agencies or “other similar source,” it is within the county’s discretion to interpret the “other similar source” provision to allow it to consider relevant evidence from the county planning department, county assessor’s office or other reliable sources. *Giesy v. Benton County*, 25 Or LUBA 493 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government determination that occasionally staying on the subject property in a travel trailer is not residential use of the property for purposes of determining whether a nonconforming residential use has been “discontinued,” is not a clearly wrong interpretation of the code, and LUBA will defer to it. *Cemper v. Clackamas County*, 25 Or LUBA 486 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government interpretation of a code “lot of record” provision as allowing legally created but now substandard lots to be separately developed if adjoining lots are held in separate ownership or if the lots were shown on a plat of record prior to the date the relevant zoning requirements took effect is reasonable, and LUBA will defer to that interpretation. *Campbell v. Multnomah County*, 25 Or LUBA 479 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. So long as the local decision maker (whether the governing body, planning commission, hearings officer or some other body) has authority to interpret local enactments, its interpretation is the interpretation of the local government, to which LUBA is required to defer under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code requires that home occupations occupy no more than 1000 square feet of an accessory building, an interpretation of that provision as excluding portions of the accessory building used to access the part of the accessory building used for the home occupation makes full use of the local government’s interpretative discretion. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a county interprets a forest zone requirement that nonforest uses be located on generally unsuitable land for production of farm or forest products as requiring consideration of the suitability of the entire parcel, the county exercises its interpretive discretion to the fullest in interpreting a home occupation approval standard that incorporates the nonforest use standard by reference, as requiring consideration of only the land under the existing building where the home occupation will be located. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is required to defer to a local government’s interpretation of its own

ordinances, so long as the proffered interpretation is not clearly wrong. *Oregon Raptor Center v. City of Salem*, 25 Or LUBA 401 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local code expresses an intent not to duplicate state mobile home park approval standards, LUBA will defer to the local government’s interpretation that the state approval standard in ORS 446.100(1)(a) is not part of the “applicable Oregon Law,” which the code requires to be considered in making permit decisions. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA may not interpret a local government’s comprehensive plan in the first instance, rather the local government must interpret its own plan, and LUBA may review that interpretation. *Citizens for Resp. Growth v. City of Seaside*, 25 Or LUBA 367 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. 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).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a code provision governing notice of decisions on a certain type of land use action does not expressly provide it applies only to a decision by the planning director, LUBA will defer to a local government’s interpretation that the code provision also applies to a decision by the hearings officer on appeal from a decision by the planning director. *Reusser v. Washington County*, 25 Or LUBA 252 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where one code provision requires a local government’s notice of decision to identify the local appeal fee, and another provision states that failure to pay the proper local appeal fee prior to expiration of the period for filing an appeal constitutes a “jurisdictional” defect, the local government may interpret the two code provisions together to mean that the period for filing an appeal does not begin to run until the required notice of decision, identifying the proper appeal fee, is provided to the appealing party. *Reusser v. Washington County*, 25 Or LUBA 252 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government’s subdivision approval standards limit the length of cul-de-sac streets, as measured from through-traffic streets, and it is reasonable to interpret the limitation as being measured from either existing through-traffic streets or both existing and proposed through-traffic streets, LUBA will defer to the local government’s selection of the latter interpretation. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is limited to considering the interpretations of ambiguous code language that are adopted by the decision-making body and may not consider interpretations that are not

adopted by the decision maker, even if the offered interpretation is reasonable. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under a local code standard requiring that arterial streets not “penetrate identifiable neighborhoods,” LUBA will defer to the local government’s determination of what constitutes an identifiable neighborhood, unless the local government’s determination is clearly wrong. *Mannenbach v. City of Dallas*, 25 Or LUBA 136 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government determines a use does not fit neatly into any of the available definitional categories in its code, but provides a reasonable explanation for categorizing the use according to its primary use, LUBA will defer to that interpretation. *Glisan Street Assoc., Ltd. v. City of Portland*, 25 Or LUBA 116 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the local code includes an exception to the term “wetland” for wetlands created by “human activity as part of an approved development project,” and there is no dispute that the subject wetland was created with the knowledge and consent of the local government, it is clearly wrong for the local government to fail to consider whether the wetland is within the local code exception. *Annett v. Clackamas County*, 25 Or LUBA 111 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Local government interpretations that particular PUD approval standards apply only at one stage of a multi-stage approval process will be sustained where the relevant code language supports that construction. However, LUBA will reject arguments that a local code should be interpreted in that manner, where the challenged decision does not interpret and apply the local code in that way and the local government’s interpretation and application of its code is not clearly wrong. *DLCD v. Crook County*, 25 Or LUBA 98 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government’s interpretation that a local code standard requiring a determination concerning the adequacy of schools “existing or planned for the area” is satisfied by findings that there is unspent money in a school district’s budget, is an interpretation of the local code that is “clearly wrong.” *Burghardt v. City of Molalla*, 25 Or LUBA 43 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is required to defer to a local government’s interpretation of its own ordinances, unless that interpretation is contrary to the express words, policy or context of the local enactment. LUBA may not interpret a local government’s ordinances in the first instance, but rather must review the local government’s interpretation of its ordinances. *O’Mara v. Douglas County*, 25 Or LUBA 25 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government determines that a recreational cattle roping use was lawfully established on the date restrictive zoning was applied, because it constituted a farm use

allowed outright by the subject zone, LUBA will defer to that interpretation so long as it is not clearly contrary to the express words, policy or context of the ordinance. *Smith v. Lane County*, 25 Or LUBA 1 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the term “vacant” in a local government’s code is undefined, but the code states that undefined terms have their “normal dictionary meaning,” the local government may adopt one of the available ordinary dictionary definitions of the term “vacant,” and LUBA will defer to that definition of the term so long as it is not clearly contrary to the context of the code provision in which the term “vacant” is found. *Rhine v. City of Portland*, 24 Or LUBA 557 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. A local government is within its interpretive discretion in interpreting the term “development” as including farming, where the code defines the term broadly and includes a nonexclusive list of examples of development that includes “site alteration such as * * * grading * * * or clearing.” *Trumper v. Washington County*, 24 Or LUBA 552 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government interprets its own enactments in a way that is inconsistent with the express terms of a local provision, and there is at least one plausible interpretation of the disputed provision that is consistent with its express terms, LUBA will not defer to the local government’s interpretation. *McGowan v. City of Eugene*, 24 Or LUBA 540 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a local government’s determination that provisions in a comprehensive plan requiring the local government to “encourage” particular kinds of activities are not mandatory approval standards. *McGowan v. City of Eugene*, 24 Or LUBA 540 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA may not interpret a local government’s ordinances in the first instance, but rather must review a local government’s interpretation of its ordinances, and the local government interpretation must be adequate for LUBA’s review. *Leabo v. Marion County*, 24 Or LUBA 495 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. If a local government has interpreted the local code in the challenged decision, LUBA must defer to that interpretation unless it is clearly contrary to the enacted language or the apparent purpose or policy of the provision. *Leabo v. Marion County*, 24 Or LUBA 495 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where LUBA must determine whether an ambiguous code provision (*i.e.*, one that is capable of more than one sustainable interpretation) is applicable to a challenged decision, and the challenged decision does not contain a reviewable interpretation of that provision, LUBA must remand the decision for the local government to interpret the provision in the first instance. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where petitioners contend a local government erred in failing to apply a code provision to the challenged decision, and the decision contains no interpretation of that code provision, but the code language unambiguously establishes that the provision in question is not applicable to the challenged decision, LUBA is not required to remand the decision so the local government can interpret its code in the first instance. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In reviewing a local government’s interpretation of its own ordinance, the question LUBA must resolve is not whether the local government interpretation is “right,” but rather whether it is “clearly wrong.” *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

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

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government determines an application for a home occupation on a parcel adjoining another parcel on which an earlier application for the same home occupation was denied, is an application for a “substantially similar” use, LUBA will defer to that interpretation of the local code requirement that an application may not be “substantially similar” to a previously denied application. *Roozenboom v. Clackamas County*, 24 Or LUBA 433 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), the question for LUBA to resolve is not whether a local government interpretation of its own code is “right,” but rather whether it is “clearly wrong.” *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA may not interpret a local code in the first instance, but rather must review a local government’s interpretation of its code. However, a local government interpretation of its code must be adequate for LUBA’s review and may not consist of a mere conclusory statement. *DLCD v. Crook County*, 24 Or LUBA 393 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the decision whether to designate property as Agriculture or Forest on comprehensive plan maps is governed by specific plan policies, a county acts within its discretion in determining that it is not required to apply and balance other generally applicable Agricultural and Forest plan policies. *Marson Trucking, Inc. v. Clackamas County*, 24 Or LUBA 386 (1993).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. In the absence of a statutory policy pertaining to forestlands that, like the statutory policy concerning EFU land, requires the preservation of forestland in large blocks, LUBA cannot require that a local government interpret and apply its nonforest use “generally unsuitable” land approval standard in the same manner as the similarly worded statutory standard pertaining to nonfarm uses on EFU land. *DLCD v. Coos County*, 24 Or LUBA 349 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code requires a proposed nonforest dwelling site to be on land generally unsuitable for forest uses, that standard can be interpreted to mean either that the proposed nonforest dwelling site itself, or that the entire forest parcel, must be generally unsuitable for forest uses. LUBA will defer to the local government’s choice between those permissible interpretations. *DLCD v. Coos County*, 24 Or LUBA 349 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is required to defer to a local government’s interpretation of its zoning ordinance, so long as the proffered interpretation is not “clearly contrary to the enacted language,” or “inconsistent with express language of the ordinance or its apparent purpose or policy.” *Tylka v. Clackamas County*, 24 Or LUBA 296 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a local government’s interpretation of its own ordinance, that expansion of a nonconforming use onto property not currently utilized by the nonconforming use is not authorized, where that interpretation is not contrary to the express words or policy of the ordinance. *Leopold v. City of Milwaukie*, 24 Or LUBA 246 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code provision states that tree protection is a proper Justification for approval of a proposed setback reduction, the local government’s interpretation that the provision allows it to approve a setback reduction to protect a particular tree, even though the setback reduction will result in the destruction of another tree, is not clearly contrary to the express terms of the code and LUBA will defer to the interpretation. *Barker v. City of Cannon Beach*, 24 Or LUBA 221 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a comprehensive plan policy provides that a change from a 10-acre minimum zone to a 5-acre minimum zone requires that “parcels are generally five acres,” a county’s interpretation of this policy to require consideration of the entire 10-acre minimum zoned area that includes the subject property is not “clearly contrary” to the terms of, or “inconsistent with the express language” or “apparent purpose and policy” of, the plan policy and must be upheld. *Thatcher v. Clackamas County*, 24 Or LUBA 207 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA will defer to a local government’s interpretation of its code so long as the proffered interpretation is not “clearly contrary to the enacted language,” or “inconsistent with

express language of the ordinance or its apparent purpose or policy.” An interpretation of a local code provision to require that in order to be recognized as separately developable, a parcel must have been in separate ownership on a particular date, is not “clearly contrary” to the terms of, or “inconsistent with the express language” or “apparent purpose or policy” of, the code provision. *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government interprets a code requirement that all functions associated with a proposed use take place “within the building” proposed to house the use to be satisfied, where a covered play area will be part of the total “floor area” of such building, its interpretation of the code is not inconsistent with the code’s express language, purpose or policy and, therefore, must be affirmed. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local code allows recycling and other incidental uses, LUBA will defer to a local government interpretation of the code as allowing a recycling facility that accepts waste material including both solid waste and recyclable material, where approximately 70 percent of the material accepted will be recycled and approximately 30 percent will be disposed of at a landfill. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. LUBA is not required to defer to a local government’s interpretation of its own code, where that interpretation is inconsistent with the express language of the code. *Goose Hollow Foothills League v. City of Portland*, 24 Or LUBA 69 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where there is a conflict between (1) plan text describing the geographic location of a Goal 5 forest resource site, and (2) other plan text giving its acreage, resolving that conflict in favor of the geographic location is at least as reasonable as resolving the conflict in favor of the acreage figure, LUBA will defer to the local government’s interpretation of its plan. *Davenport v. City of Tigard*, 23 Or LUBA 565 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where a local government’s interpretation of its comprehensive plan Goal 5 inventory is consistent with the plan language and appears to be consistent with the purpose and policy of the plan, LUBA may not reject that interpretation. *Davenport v. City of Tigard*, 23 Or LUBA 565 (1992).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation. Where the purposes of a county’s commercial zones are to provide for retail-oriented needs in areas characterized by good transportation services, and such needs and services are not identified with a particular proposed golf course, the county’s interpretation of its own ordinance that the golf course is not a commercial use is not inconsistent with express language of the local ordinance or the ordinance’s apparent purpose or policy and will be affirmed. *West v. Clackamas County*, 23 Or LUBA 558 (1992).