31.1.3 Permits – Approval Standards – Standards/Criteria. Where a city approves a building permit for a temporary mass shelter under the city's Housing Emergency Ordinance because it satisfies the development standards in the city's Central Employment (EX) zone, where the petitioner argues not that the EX zone development standards that the city applied in approving the building permit are not "clear and objective" but, rather, that the city was required but failed to apply other land use standards in approving the building permit, and where LUBA concludes that none of those other land use standards are applicable approval criteria, the city's decision is subject to the building permit exclusion from LUBA's jurisdiction in ORS 197.015(10)(b)(B). *Madrona Park, LLC v. City of Portland*, 80 Or LUBA 26 (2019).

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

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

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

31.1.3 Approval Standards – Standards/Criteria. Under the codification requirement at ORS 215.416(8)(a), permit approval standards and criteria must inform interested parties of the basis on which an application will be approved or denied. *Waveseer of Oregon, LLC v. Deschutes County*, 80 Or LUBA 435 (2019).

31.1.3 Approval Standards – Standards/Criteria. A board of county commissioners' broad interpretation of "youth activity center" that encompasses a wide variety of youth-oriented activities that may occur outdoors or in a farm structure as part of an existing farm use or that may occur in and around a residence as accessory to a residential use is unreasonable under ORS

475B.486 and violates the codification requirement at ORS 215.416(8)(a). *Waveseer of Oregon, LLC v. Deschutes County*, 80 Or LUBA 435 (2019).

31.1.3 Permits – Approval Standards – Standards/Criteria. According to the "law of the case" pursuant to *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), matters conclusively resolved before LUBA cannot be relitigated in subsequent appeals of subsequent decisions on the same matter. However, that principle is not violated where (1) LUBA remands to the county to adopt new findings, based on substantial evidence, and (2) on remand, the county accepts new evidence and adopts new findings, as LUBA directed. Where LUBA's original decision discussed certain requirements to provide guidance and framework on remand, and some of the county's findings are still insufficient on remand does not mean that the county violated the "law of the case." *Richards v. Jefferson County*, 79 Or 171 (2019).

31.1.3 Permits – Approval Standards – Standards/Criteria. On remand, where LUBA instructed the county to resolve whether the project applicant's farm operation qualifies as a "commercial farming operation" for purposes of applying for an accessory farm dwelling for a relative, LUBA established that certain findings and evidence are necessary to establish compliance with OAR 660-033-0130(9). The county's findings fall short of establishing that the applicant's farm operation qualifies as a "commercial farming operation," because it is an undefined term, and it is the county's obligation to attempt to articulate the thresholds that separate a "commercial" from a non-commercial farming operation, and to determine those thresholds in the first instance. Although the county has some discretion to determine the thresholds, that determination will necessarily constitute a mixed question of fact and law, subject to LUBA's review for legal error and evidentiary sufficiency. *Richards v. Jefferson County*, 79 Or 171 (2019).

31.1.3 Permits – Approval Standards – Standards/Criteria. The focus of OAR 660-033-0130(9) and county code that implements it regarding whether the "farm operator * * * continue[s] to play the predominant role in the management and farm use of the farm," is on the farm operator's involvement in farm operations *on the subject property*, not on off-farm businesses that may relate to the farm operation. The commercial farm operator's involvement in off-farm businesses do not help establish any element of OAR 660-033-0130(9). The commercial farm operator's involvement in off-farm businesses are relevant to establishing the elements of OAR 660-033-0130(9) only in so much as the time spent on those businesses and away from the farm operation might undermine the claim that the farm operator will continue to play the "predominant role" in the farm operation and requires assistance in running the farm operation. *Richards v. Jefferson County*, 79 Or 171 (2019).

31.1.3 Permits – Approval Standards – Standards/Criteria. LUBA will remand a decision by the county planning department approving conversion of a portion of an existing church into a "parsonage," a term which is undefined by state or local law, but which includes a kitchen, bedroom, and bathroom for the use by the church's pastor, where the county's decision fails to identify any land use standards that apply to the proposed use, and did not provide notice or an opportunity for a hearing or otherwise follow the procedures in ORS 215.416(11) without apparent explanation, and LUBA determines that the application for the proposed parsonage is an application for a "permit" as defined in ORS 215.402(4). *Wetherell v. Douglas County*, 78 Or LUBA 33 (2018).

31.1.3 Permits – Approval Standards – Standards/Criteria. Although it is not clear a proposed "parsonage," which is a portion of a church to include a bedroom, kitchen and bathroom for use by the church's pastor, must be evaluated and approved or denied under the criteria that apply to a nonfarm dwelling under the county's land use ordinance implementing ORS 215.284, those land use standards require the exercise of discretion in approving the development of land. Further, it is possible, even probable, that any application for a proposed residential use associated with a church must be evaluated under the standards at ORS 215.441, and accordingly the county must process such an application according to its procedures that apply to permits. *Wetherell v. Douglas County*, 78 Or LUBA 33 (2018).

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

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a city has two separate criteria—a transportation impacts criterion, and a services and utilities criterion—both of which are generally concerned with achieving and maintaining an adequate and safe transportation system, and both criteria must be satisfied, a finding that one of those criteria is satisfied does not necessarily mean the other criterion is satisfied. In such a situation, simply because the city found no "traffic impacts" requiring mitigation under the traffic impacts criterion does not mean the city imposed an unconstitutional exaction when it required right-of-way dedication and street improvements as conditions of approval to satisfy the services and utilities criterion. It simply means the city applies the rights-of-way requirements through the services and utilities criterion, rather than the transportation impacts criterion. *Hill v. City of Portland*, 77 Or LUBA 317 (2018).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a code "principle" is worded as alternative actions an applicant "should" take, and some of the "standards" that follow that "principle" are clearly worded as mandatory, while others are clearly worded as non-mandatory considerations, where the challenged decision does not address the disputed "principle," remand is required for the city council to determine if the disputed "principles" are mandatory and, if so, to ensure one of the mandatory alternatives is satisfied. *Hagan v. City of Grants Pass*, 76 Or LUBA 196 (2017).

31.1.3 Permits – Approval Standards – Standards/Criteria. In *Pete's Mountain Homeowners Assn. v. Clackamas Cty.*, 227 Or App 140, 204 P3d 802, *rev den*, 346 Or 589 (2009), the Court of Appeals held that Ballot Measure 49, which was approved to replace previously approved Ballot Measure 37, must be given effect and replaces Ballot Measure 37 which would otherwise apply to a particular permit application, notwithstanding the ORS 215.427(3)(a) goal post statute that requires that a permit application be subject to the standards in effect when the permit application

was filed. *Pete's Mountain* case of conflicting statutes—Ballot Measure 49 conflicted with and applied in place of the goal post statute. The holding in *Pete's Mountain* does not mean that new county cell tower regulations apply to a permit application that was submitted before the new cell tower regulations were adopted. In that circumstance the goal post statute applies and the new cell tower regulations do not apply, because there is no statutory conflict. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 215.427(3)(a) generally requires that approval or denial of a permit application be based on "standards and criteria" that were in effect when the application is first submitted. Expanding a sewer improvement district boundary so that a ban against connecting properties that are not within the sewer improvement district to the public sewer system no longer bars connection of a dwelling on the property to the public sewer system, as it did when the permit application was first submitted, does not create a new standard or criterion after the application was submitted. In that circumstance, ORS 215.427(3)(a) does not preclude the city from requiring that the dwelling connect to the public sewer system, even though it could not have done so at the time the application was submitted. *Evans v. City of Bandon*, 74 Or LUBA 418 (2016).

31.1.3 Permits – Approval Standards – Standards/Criteria. A development standard requiring a developer to dedicate and improve adjoining roads to city half-street standards "to the extent the city demonstrates consistency with constitutional requirements" merely acknowledges that the city's ability to require dedications and improvements may be limited by the Takings Clause of the U.S. Constitution, and is not properly understood to allow city staff to waive the code requirements on a case-by-case basis without any analysis or explanation. *McCollough v. City of Eugene*, 74 Or LUBA 573 (2016).

31.1.3 Permits – Approval Standards – Standards/Criteria. An argument that an existing road serving a proposed planned unit development fails to comply with standards in the fire code provides no basis for reversal or remand of the decision where the fire code is not a "standard and criteria" that is "set forth in the [city's] development ordinance" within the meaning of ORS 227.173, and nothing in the city's development ordinance requires any consideration of the fire code standards during the tentative PUD phase of approval. *Trautman v. City of Eugene*, 73 Or LUBA 209 (2016).

31.1.3 Permits – Approval Standards – Standards/Criteria. A city's acceptance of dedication of a right-of-way does not make the location of the right-of-way as depicted in the dedication a "standard[]" within the meaning of ORS 227.178(3)(a). *GPA 1, LLC v. City of Corvallis*, 73 Or LUBA 339 (2016).

31.1.3 Permits – Approval Standards – Standards/Criteria. A local code provision that prohibits grading or development on portions of a site that exceed 20 percent is "clear enough for an applicant to know what [it] must show during the application process." *Lee v. City of Portland*, 57 Or App 798, 802, 646 P2d 662 (1982). Nothing in the language of ORS 227.173(1) requires that a *method* of measuring slope must be included in the provision in order to determine whether the 20 percent standard is met. *SE Neighbors Neighborhood Assoc. v. City of Eugene*, 68 Or LUBA 51 (2013).

31.1.3 Permits – Approval Standards – Standards/Criteria. A local code provision that sets out the circumstances when environmental review is *required* for a development proposal does not foreclose an applicant from voluntarily seeking environmental review through a different process made available in a different code section that gives applicants the choice of satisfying approval standards or seeking environmental review under subjective approval standards. *Von Clemm v. City of Portland*, 66 Or LUBA 379 (2012).

31.1.3 Permits – Approval Standards – Standards/Criteria. In order for the local government to postpone a determination of compliance with an applicable criterion to a future proceeding, the local government must first determine, based on evidence in the record, that "compliance with the approval criterion is possible." The evidentiary showing that is required in order for the local government to determine that future compliance is "possible" is not the same evidentiary showing that will be required when a local government makes the required ultimate finding that an approval criterion is satisfied or will be satisfied with measures that are "likely and reasonably certain to succeed." *Gould v. Deschutes County*, 227 Or App 601, 612, 206 P3d 1106 (2009). *Northgreen Property LLC v. City of Eugene*, 65 Or LUBA 83 (2012).

31.1.3 Permits – Approval Standards – Standards/Criteria. In establishing that a request for land use approval complies with applicable approval standards, a local government may find that the approval standard is met or find that any needed technical solutions that may be required to comply with the standard are "possible, likely and reasonably certain to succeed." *Gould v. Deschutes County*, 216 Or App 150, 161, 171 P3d 1017 (2007) (citing *Meyer v. City of Portland*, 67 Or App 274, 281-82, 678 P2d 741, *rev den*, 297 Or 82, 679 P2d 1367 (1984)). *Johnson v. City of Gladstone*, 65 Or LUBA 225 (2012).

31.1.3 Permits – Approval Standards – Standards/Criteria. Factors set out in a purpose statement provision provide context for interpreting a code provision that requires the local government to determine that a proposed development is compatible with uses and development on adjacent land, even though the factors set out in the purpose statement are not independent approval criteria. *Housing Authority of Jackson County v. City of Medford*, 65 Or LUBA 295 (2012).

31.1.3 Permits – Approval Standards – Standards/Criteria. Under the Court of Appeals' reasoning in *Davenport v. City of Tigard*, 121 Or App 135, 141, 854 P2d 483 (1993), the statutory term "standards and criteria" is sufficiently malleable to encompass a two-step code requirement that first requires that an applicant submit sufficient information to allow the local government to determine whether mitigation conditions of approval are needed for the proposed mining use, and second requires that the local government determine if conditions of approval are needed and develop and impose those conditions if they are needed. *Tidewater Contractors v. Curry County*, 65 Or LUBA 424 (2012).

31.1.3 Permits – Approval Standards – Standards/Criteria. 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).

31.1.3 Permits – Approval Standards – Standards/Criteria. 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).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 227.173(1), which requires that city decisions on applications for permits be based on standards and criteria in the city's development ordinance, does not mandate that a PUD Master Plan also include "standards and criteria," as those words are used in ORS 227.173(1). *Athletic Club of Bend v. City of Bend*, 63 Or LUBA 467 (2011).

31.1.3 Permits – Approval Standards – Standards/Criteria. In making a decision on a land use application, a local government is required to determine whether the application complies with all applicable land use approval criteria at the time it renders a decision on the application. A local government is not entitled to include a general condition that requires a successful applicant to come back to the county each time a land use regulation that was not considered is discovered after the original approval decision has become final. *Kersey v. Lake County*, 62 Or LUBA 239 (2010).

31.1.3 Permits – Approval Standards – Standards/Criteria. Absent permit approval criteria requiring otherwise, a petitioner cannot challenge an earlier unappealed decision extending a permit approval for 18 months, in the context of an appeal of a later decision modifying the permit. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

31.1.3 Permits – Approval Standards – Standards/Criteria. A code criterion intended to protect against adverse environmental impacts within a floodplain corridor does not require the applicant for a driveway within the corridor to address alleged traffic safety and vision clearance conflicts with users of nearby driveways. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 92.040(2) provides that "only those local government laws * * * that are in effect at the time of [subdivision] application shall govern subsequent construction on the property * * *." A local government does not violate ORS 92.040(2) by applying access standards that were adopted after a subdivision was recorded to deny a request for direct driveway access onto an arterial road adjoining one of the subdivision lots where the proposed driveway would be constructed in part "off" the property and the approved master plan showed access to the lot from an internal local roadway. *Athletic Club of Bend, Inc. v. City of Bend*, 61 Or LUBA 349 (2010).

31.1.3 Permits – Approval Standards – Standards/Criteria. A code standard allowing modifications to a conditional use permit that are not "materially inconsistent with the conditions of the original approval" does not preclude all modifications that are inconsistent in some way with the original conditions of approval, only modifications that "materially" or "significantly"

conflict with the original conditions of approval. *Connecting Eugene v. City of Eugene*, 61 Or LUBA 439 (2010).

31.1.3 Permits – Approval Standards – Standards/Criteria. 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).

31.1.3 Permits – Approval Standards – Standards/Criteria. Under the Court of Appeals' decision in *Pete's Mountain Homeowners Assn. v. Clackamas Cty.*, 227 Or App 140, 204 P3d 802, *rev den*, 346 Or 589 (2009), where an application for subdivision relies on Ballot Measure 37 waivers, those waivers qualify as "standards and criteria" under the ORS 215.427(3)(a) goal-post statute, and the subdivision application is not subject to subsequently enacted standards and criteria. But Ballot Measure 49, which post-dates Ballot Measure 37 and is inconsistent with the ORS 215.427(3)(a) goal-post statute overrides the goal-post statute and limits the Ballot Measure 37 subdivision applicant to one of the three remedies specified in Ballot Measure 49. *Hoffman v. Jefferson County*, 60 Or LUBA 101 (2009).

31.1.3 Permits – Approval Standards – Standards/Criteria. If a local government interprets its code to the effect that federal particulate matter standards supply the relevant test for compliance with local approval standards, articulates that interpretation for the first time in its final decision, and denies the application for failure to present evidence of compliance with the federal standards, remand would likely be necessary to give the applicant an opportunity to present evidence addressing the federal standards. However, remand is not warranted where the decision merely discusses federal standards, but ultimately concludes that those standards do not govern. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

31.1.3 Permits – Approval Standards – Standards/Criteria. It is generally the applicant's responsibility to anticipate a range of reasonable interpretations or approaches to demonstrating compliance with an approval standard, even if the approval standard is nonspecific and subjective, and to shape the evidence accordingly. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a local government denies an application based on one approval criterion, and LUBA remands the decision in part for the local government to consider whether additional approval standards apply, it is possible that in determining that additional approval standards apply the local government could identify additional bases for denial under the additional criteria, even if such additional bases for denial were not cited in the original decision. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

31.1.3 Permits – Approval Standards – Standards/Criteria. A street connectivity requirement that development street systems not create "excessive travel lengths" is sufficient to qualify as a standard or criterion, and therefore does not violate the ORS 227.173(1) requirement that permit decisions must "be based on standards and criteria." *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

31.1.3 Permits – Approval Standards – Standards/Criteria. When an applicant files a consolidated set of applications for: (1) a comprehensive plan amendment; (2) a zone change that is dependent on that plan map amendment; and (3) a development permit that is dependent on that zone change, the goal post rule at ORS 197.427(3)(a) does not apply to "freeze" in place the standards and criteria that applied to that development permit as of the date the applications were filed. Instead the standards and criteria that apply are those supplied by the new plan and zoning designations. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190 (2009).

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

31.1.3 Permits – Approval Standards – Standards/Criteria. A code provision stating that when it appears that the area of a proposed partition is to be ultimately divided into four or more lots or parcels the code provisions pertaining to subdivisions apply simply authorizes the city to apply subdivision procedures and standards to a partition application, and does not itself constitute "standard" or "criteria" under which the city could deny the partition application. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a city discovers late in a proceeding on a partition application that its code may require application of certain subdivision approval standards, the city should identify any applicable subdivision standards and give the applicant the opportunity to demonstrate compliance with them, even if that would require the city to make its decision after the statutory deadline for taking final action on the application has passed. However, it is inconsistent with ORS 227.178(3) for the city to summarily deny the partition and effectively force the applicant to submit a new application, where that denial is not based on any applicable standard or criteria. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

31.1.3 Permits – Approval Standards – Standards/Criteria. In applying a land use regulation standard that only requires a service provider certification or letter, a decision maker is not obligated to ensure that every representation in a service provider's certification or letter is correct or supported by substantial evidence. *Pete's Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

31.1.3 Permits – Approval Standards – Standards/Criteria. Petitioners' argument that a city erred by failing to find that proposed alterations to a historic building are necessary to ensure its continued use will be rejected on appeal, where the local code merely says some alterations will be necessary to ensure continued use of historic resources and other provisions of the code expressly set out the criteria that the city must address in its findings. *Burgess v. City of Corvallis*, 55 Or LUBA 482 (2008).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a city's code conditionally permits cellular antennae on existing buildings, a city decision that denies a request for conditional use approval to site cellular antennae on an existing water tower simply because the water tower is an existing nonconforming structure will be remanded, where there is no language in the city's code that would permit such a limitation and the city provides no explanation for reading such a limitation into its code. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 215.427(3) does not preclude the local government's compliance with OAR 660-041-0030, which requires notice to DLCD of an application for a permit pursuant to a Ballot Measure 37 waiver, because the rule is not an "approval standard or criteria" applicable to a permit application. *DLCD v. Deschutes County*, 54 Or LUBA 799 (2007).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where local code criteria applicable to approval of a forest template dwelling do not include any reference to local floodplain regulations, and those floodplain regulations appear to regulate the actual construction and placement of structures within a floodplain zone, and are more properly addressed at the time a building permit is issued, the county does not err in failing to adopt findings addressing those floodplain regulations in approving a forest template dwelling. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

31.1.3 Permits – Approval Standards – Standards/Criteria. A comprehensive plan policy that merely describes the county's resource designations is not a mandatory tentative subdivision plan approval criterion, and the county was therefore not required to adopt findings addressing it. *Doob v. Josephine County*, 50 Or LUBA 209 (2005).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the text of a particular zoning district that allows permitted uses to be reviewed as conditional uses seems to call for a focus on the characteristics of the use itself, but the conditional use chapter of the zoning ordinance expressly provides that conditional uses may require special consideration due to unique site characteristics, the city does not err in interpreting the zoning district text to allow it to consider whether unique site characteristics justify treating the permitted use as a conditional use. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

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

31.1.3 Permits – Approval Standards – Standards/Criteria. The ORS 227.178(3) prohibition on "shifting the goal posts" and the prohibition described in *Alexanderson v. Clackamas County*, 126 Or App 549, 869 P2d 873 (1994), on reinterpretations of local provisions that are a "product of a design to act arbitrarily and inconsistently from case to case" are distinct and independent

prohibitions, although both may be invoked in particular circumstances. *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a conditional use approval criterion provides that conditional use approval "may be denied if the applicant" fails to make a specified demonstration concerning the proposed location of the conditional use, a county court's interpretation of the term "may" to render the criterion nonmandatory is not inconsistent with the language of the criterion or any identified underlying purpose or policies and is therefore not reversible under ORS 197.829(1). *Gumtow-Farrior v. Crook County*, 47 Or LUBA 186 (2004).

31.1.3 Permits – Approval Standards – Standards/Criteria. A zoning ordinance provision that requires that identified resource protection areas "link" with other identified resource protection areas is not so vague as to violate the ORS 227.173 requirement that review of land use permits be based on "standards and criteria." *Renaissance Development v. City of Lake Oswego*, 45 Or LUBA 312 (2003).

31.1.3 Permits – Approval Standards – Standards/Criteria. A zoning ordinance provision that requires maintenance of "an ecologically viable plant and wildlife community" is not so vague as to violate the ORS 227.173 requirement that review of land use permits be based on" standards and criteria." *Renaissance Development v. City of Lake Oswego*, 45 Or LUBA 312 (2003).

31.1.3 Permits – Approval Standards – Standards/Criteria. LUBA will remand a decision that denies a permit application because it does not comply with a zoning ordinance standard that requires "the largest trees be included in [a] protection area," where the decision does not allow the applicant to determine how many of the large trees on the property must be protected and does not provide any guidance on how the city applies that standard. *Renaissance Development v. City of Lake Oswego*, 45 Or LUBA 312 (2003).

31.1.3 Permits – Approval Standards – Standards/Criteria. A city's finding that buried concrete reservoirs will not cause "significant detrimental impact" to the environment is supported by substantial evidence, where the city's code defines that term to mean development that disrupts or destroys ecological systems, and evidence in the record shows that the surface over the buried reservoirs will be restored and replanted and the reservoirs will not significantly affect underground hydrology. *Bauer v. City of Portland*, 44 Or LUBA 210 (2003).

31.1.3 Permits – Approval Standards – Standards/Criteria. Under a code provision requiring a "mitigation site plan" if development results in unavoidable significant detrimental environmental impacts, it is not error for the city to consider proposed mitigation in finding that the development will not result in significant impacts, and thus avoid the requirement for a mitigation site plan, where that approach does not avoid prescribed types of mitigation, and instead simply eliminates submission of redundant information. *Bauer v. City of Portland*, 44 Or LUBA 210 (2003).

31.1.3 Permits – Approval Standards – Standards/Criteria. A city's refusal to interpret a zoning ordinance standard that requires that requested rezoning must be the "best suited for the specific site, based on specific policies of the * * * [c]omprehensive [p]lan" to require that the

applicant demonstrate a current unmet need for the uses allowed in the requested zone is not reversible under ORS 197.829(1), where no plan policy is worded to impose that requirement. *Dimone v. City of Hillsboro*, 44 Or LUBA 698 (2003).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a local approval criterion requires a finding that a proposed use will have a minimal adverse impact on surrounding uses compared to the impact of development permitted outright, a city may not limit its impact analysis to only one permitted use, where other permitted uses in the zone may have impacts similar to those of the proposed use. *Oregon Child Devel. Coalition v. City of Madras*, 43 Or LUBA 184 (2002).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a local approval criterion requires a finding that a proposed use will "preserve assets of particular interest in the community," a city council's finding that the proposed use does not satisfy the criterion is inadequate where the finding merely sets out a series of concerns about the proposed use without explaining why those concerns are "assets of particular interest" that the proposed use will not preserve. *Oregon Child Devel. Coalition v. City of Madras*, 43 Or LUBA 184 (2002).

31.1.3 Permits – Approval Standards – Standards/Criteria. A city's finding that a proposed use will place an "excessive burden on traffic" based on a conclusion that the applicant failed to provide a traffic study that estimated the number of vehicles that would use local streets is inadequate, where there is a trip generation study in the record that provides the evidence the finding states is missing. *Oregon Child Devel. Coalition v. City of Madras*, 43 Or LUBA 184 (2002).

31.1.3 Permits – Approval Standards – Standards/Criteria. A 1979 board of county commissioners decision directing the county planning department to issue septic and building permits for a single-family dwelling does not necessarily confer a continuing right to construct a dwelling where no permits were ever issued, no steps have been taken to construct the approved development, and county approval standards have changed in the years since the 1979 decision such that the proposed development no longer complies with applicable criteria. *PJT, Inc. v. Jackson County*, 42 Or LUBA 536 (2002).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a county has adopted specific ordinances to shield certain land use permits from subsequent changes in law without regard to whether the permit holder has a vested right to complete construction of the use based on substantial construction of the authorized use prior to the change in law, uses approved by land use permits that are not shielded from subsequent changes in law by the ordinances are not similarly shielded from those changes in law and must comply with existing law. *PJT, Inc. v. Jackson County*, 42 Or LUBA 536 (2002).

31.1.3 Permits – Approval Standards – Standards/Criteria. LUBA will remand a decision denying an application to place and remove fill in a riparian zone, where the findings do not independently address the relevant standards and it is not clear what evidence the hearings officer relied on to apply the standards. *Griffin v. Jackson County*, 41 Or LUBA 159 (2001).

31.1.3 Permits – Approval Standards – Standards/Criteria. The standard a county must apply under ORS 215.275 in considering siting of a public utility facility on EFU land is the same standard mandated by *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998): "whether the facility must be sited in an EFU zone in order to provide the service." The factors specified in ORS 215.275 may be used merely to demonstrate compliance with that ultimate standard. *City of Albany v. Linn County*, 40 Or LUBA 38 (2001).

31.1.3 Permits – Approval Standards – Standards/Criteria. When considering approval of a public utility facility on EFU land, the factors listed in ORS 215.275(2) are intended to be applied not only to the proposed EFU site, but also to the non-EFU sites considered as potential alternatives. *City of Albany v. Linn County*, 40 Or LUBA 38 (2001).

31.1.3 Permits – Approval Standards – Standards/Criteria. Under ORS 215.275, when a county considers siting of a certain type of public utility facility on EFU land, the county need not consider as a "reasonable alternative" a different type of utility facility designed to meet the same need as the proposed facility type. *City of Albany v. Linn County*, 40 Or LUBA 38 (2001).

31.1.3 Permits – Approval Standards – Standards/Criteria. A city is allowed latitude under ORS 227.173(1) in adopting nonspecific and highly subjective criteria, and in explaining what such criteria require in particular cases. Design review criteria requiring that proposed signs enhance the character of historic districts are not impermissibly vague under ORS 227.173(1), where a reasonable applicant could discern from the criteria and the city's explanation of the district's character why the proposed sign violates the criteria. *Multi-Light Sign Co. v. City of Portland*, 39 Or LUBA 605 (2001).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the ORS 215.283(1)(w) authorization for rural fire service facilities in EFU zones had taken effect, but a county had not yet amended its zoning ordinance to reflect the statutory change, ORS 215.283(1)(w) applies directly, and the county does not violate the zoning ordinance by approving a rural fire service facility in its EFU zone. *Keicher v. Clackamas County*, 39 Or LUBA 521 (2001).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a city cannot find its acknowledged shoreland land use regulations, it may not apply the county's shoreland land use regulations to approve a request to place fill in the shoreland; it must apply Goal 17 (Coastal Shorelands) directly. *Willhoft v. City of Gold Beach*, 39 Or LUBA 353 (2001).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a city code provision states that, following approval of a permit application, impacts of the proposal must be mitigated, a requirement that the city manager adopt rules to implement that code mitigation requirement does not violate ORS 227.173(1), which requires that the "standards and criteria" for approval or denial of a land use permit be included in the city's development ordinances. *Rest-Haven Memorial Park v. City of Eugene*, 39 Or LUBA 282 (2001).

31.1.3 Permits – Approval Standards – Standards/Criteria. A city does not err by failing to apply comprehensive plan annexation policies in reviewing an application for annexation, where

those policies were adopted after the application for annexation was submitted and became complete. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

31.1.3 Permits – Approval Standards – Standards/Criteria. When a variance approval is based on a specific finding that the proposed use is permitted in the underlying zone, the variance approval establishes a time frame for constructing the proposed use, and when the applicant applies for the building permit within the allotted time, the city is obligated by ORS 227.178(3) to apply the same "standards and criteria" that were applicable at the time the variance application was submitted. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 227.178(3) implicitly requires that a city apply a consistent set of standards to the discretionary approval of the proposed development of land and the construction of that development in accordance with the discretionary approval. A city may not apply one set of standards to the discretionary approval of a proposed development of land and subsequently apply an amended standard to deny a building permit to construct the development in accordance with the discretionary permit. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

31.1.3 Permits – Approval Standards – Standards/Criteria. The approval of a "permit" under ORS 227.160(2) and 227.178(3) carries with it the right to obtain the building permits that are necessary to build the approved proposed development of land, provided the applicant seeks and obtains those building permits within the time specified in the permit itself or in accordance with any applicable land use regulations that establish a deadline for seeking and obtaining required building permits. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

31.1.3 Permits – Approval Standards – Standards/Criteria. A county errs by finding that its acknowledged zoning ordinance fully implements the acknowledged comprehensive plan, thus making it unnecessary to apply comprehensive plan provisions directly to an application for permit approval, where the acknowledged zoning ordinance specifically requires that the application for permit approval must demonstrate compliance with the acknowledged comprehensive plan and the county does not identify any zoning ordinance provisions that implement applicable comprehensive plan policies. *Fessler v. Yamhill County*, 38 Or LUBA 844 (2000).

31.1.3 Permits – Approval Standards – Standards/Criteria. Siting requirements for forest template dwellings that require that impacts and fire risks be "minimized" govern *where* a proposed dwelling should be sited rather than *whether* a dwelling should be approved. *Fessler v. Yamhill County*, 38 Or LUBA 844 (2000).

31.1.3 Permits – Approval Standards – Standards/Criteria. A code provision that authorizes a city to condition permit approval on execution of a waiver of remonstrance is not a permit approval criterion. Where the applicant expresses opposition to executing such a waiver of remonstrance, the city may condition its approval of the permit on execution of the waiver of remonstrance, but the city may not deny the permit based on such expressions of opposition. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

31.1.3 Permits – Approval Standards – Standards/Criteria. A city's decision violates ORS 227.173(1) where the city relies on "factors" or "considerations" unconnected to approval standards in its land use regulations to deny a permit application. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

31.1.3 Permits – Approval Standards – Standards/Criteria. A local government is not obligated to accept evidence that ODOT approved access onto a state highway as sufficient to satisfy a county criterion that the proposed quarry operation not impose an undue burden on public improvements, which include public roads. *Wild Rose Ranch Enterprises v. Benton County*, 37 Or LUBA 368 (1999).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the staff report identifies an approval criterion and the final decision fails to demonstrate compliance with the criterion or take the position that the criterion does not apply, the decision will be remanded. *Latta v. City of Joseph*, 36 Or LUBA 708 (1999).

31.1.3 Permits – Approval Standards – Standards/Criteria. That a use is authorized under a zoning ordinance or granted building or zoning permits does not, alone, shield the use from later-adopted zoning ordinance amendments that prohibit the use or impose a requirement for additional permits. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

31.1.3 Permits – Approval Standards – Standards/Criteria. OAR 660-033-0135 and 660-033-0140 have no legal effect on the continued validity of farm dwelling permits approved prior to the adoption of those rules or the county's authority to impose time limits on those previously approved permits or to adopt standards for extending those new time limits. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

31.1.3 Permits – Approval Standards – Standards/Criteria. Under ORS 215.428(3), OAR 660-033-0140 may not be applied to applications for farm dwelling permits that were filed prior to the effective date of the rule and were pending on the date the rule became effective. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where decisions on an extension of a permit are not governed by clear and objective standards, such decisions involve the exercise of discretion and satisfy the discretionary element of the definition of "permit" at ORS 215.402(4). *Heidgerken v. Marion County*, 35 Or LUBA 313 (1998).

31.1.3 Permits – Approval Standards – Standards/Criteria. An application for an extension of a conditional use permit involves the "discretionary approval of a proposed development of land" and is subject to the requirement at ORS 215.416 that approval or denial of a permit be subject to standards and criteria, where the local code contains no standards governing permit extensions and thus grants unfettered discretion to the county to approve or deny the extension. *Heidgerken v. Marion County*, 35 Or LUBA 313 (1998).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 197.175 requires that land use decisions comply with acknowledged comprehensive plans. When approval criteria included

in acknowledged land use regulations entirely displace the comprehensive plan as relevant approval criteria, the comprehensive plan must make that intent clear. *Durig v. Washington County,* 35 Or LUBA 196 (1998).

31.1.3 Permits – Approval Standards – Standards/Criteria. While petitioners may raise issues concerning compliance with approval criteria that are not identified in the local notice of hearing, petitioners must supply some explanation why they believe a "purpose statement" should be viewed as an approval criterion; petitioners may not simply assume that it is a criterion. *Rouse v. Tillamook County,* 34 Or LUBA 530 (1998).

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

31.1.3 Permits – Approval Standards – Standards/Criteria. 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).

31.1.3 Permits – Approval Standards – Standards/Criteria. A "public need" approval standard contained in a resolution attached as an appendix to the acknowledged zoning ordinance was not repealed by implication and must be applied to a request for permit approval. *Port Dock Four, Inc. v. City of Newport,* 33 Or LUBA 613 (1997).

31.1.3 Permits – Approval Standards – Standards/Criteria. Identification of a development code section number is sufficient to provide notice of the applicable criteria in a notice of hearing. It is not necessary to interpret the development code section in the notice of hearing to identify the portions of the identified development code section that institute mandatory approval criteria. *Fjarli v. City of Medford,* 33 Or LUBA 451 (1997).

31.1.3 Permits – Approval Standards – Standards/Criteria. LUBA will not find that the application of a broad design review standard violates the Fourteenth Amendment to the U.S. Constitution unless petitioner shows that a policy unlawfully discriminating in favor of some persons against others either has been adopted or has been followed in practice. *Johns v. City of Lincoln City,* 32 Or LUBA 195 (1996).

31.1.3 Permits – Approval Standards – Standards/Criteria. Findings are inadequate to establish that a proposed use does or can satisfy the definition of "light industrial business" when there are no factual findings regarding the number of employees necessary for the proposed use. *Miller v. City of Joseph,* 31 Or LUBA 472 (1996).

31.1.3 Permits – Approval Standards – Standards/Criteria. That an applicant's personal expertise is critical in designing a proposed use does not preclude compliance with a local ordinance requirement that a conditional use permit run with the land. Neither is it necessary to

condition approval of the use on continuing participation by that applicant, since it is not dependent on her for its operation. *Martin v. Jackson County*, 30 Or LUBA 317 (1996).

31.1.3 Permits – Approval Standards – Standards/Criteria. An approval standard requiring compatibility with the design of other developments in the same general vicinity does not require that an industrial use in an industrial zone be designed to resemble nearby elementary schools or residential dwellings. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 227.173(1) requires that permit standards and criteria be set out in local development ordinances and that land use decisions identify applicable standards and criteria. The statute does not prohibit a local government from requiring compliance with comprehensive plan policies through an ordinance, or from applying comprehensive plan criteria in quasi-judicial proceedings. *Holland v. City of Cannon Beach*, 30 Or LUBA 85 (1995).

31.1.3 Permits – Approval Standards – Standards/Criteria. A local government is not mandated to grant variances to its street design standards when the site characteristics preclude compliance with them; satisfaction of some criteria does not excuse an applicant from complying with other applicable criteria. *Holland v. City of Cannon Beach*, 30 Or LUBA 85 (1995).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 215.236(2) requires that farm assessment disqualifications be filed within 120 days of approval of a nonfarm dwelling permit only when the subject property is assessed for farm use at the time of approval. A county's decision to modify a condition of approval requiring disqualification from farm assessment within 120 days after approval does not violate ORS 215.236(2) when the subject property was not assessed for farm use at the time of approval. *Wakeman v. Jackson County*, 29 Or LUBA 521 (1995).

31.1.3 Permits – Approval Standards – Standards/Criteria. ORS 197.829 governs this Board's scope of review in reviewing local government governing bodies' interpretations of local enactments. ORS 197.829(4) has nothing to do with whether a particular statutory provision applies directly as an approval standard for a local government land use decision. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

31.1.3 Permits – Approval Standards – Standards/Criteria. Whereas ORS 358.653(1) imposes a duty on state agencies and local governments that have a proprietary interest in historically significant properties to consult with the state Historic Preservation Office prior to seeking demolition of such properties, it does not establish requirements for state agencies and local governments to follow in carrying out their authority to regulate property under the ownership and control of other entities. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

31.1.3 Permits – Approval Standards – Standards/Criteria. 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).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where LUBA remands a local government decision granting a home occupation permit, the permit expires on the date the decision is remanded. Under a local code requirement limiting home occupation permits to one year, the year is measured from the date of a decision on remand granting the permit, not the date of the original permit decision. *Wuester v. Clackamas County*, 27 Or LUBA 314 (1994).

31.1.3 Permits – Approval Standards – Standards/Criteria. Regardless of whether the local decision maker imposed a condition requiring satisfaction of DEQ noise standards, DEQ noise standards are not approval criteria for an auto repair home occupation permit, where the local code does not make DEQ noise standards applicable approval criteria. *Wuester v. Clackamas County*, 27 Or LUBA 314 (1994).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where local code language unambiguously requires findings of compliance with certain standards prior to issuance of a permit, the standards are properly viewed as approval standards, rather than performance standards, which only provide a basis for revocation of a permit after it is issued. *Towry v. City of Lincoln City*, 26 Or LUBA 554 (1994).

31.1.3 Permits – Approval Standards – Standards/Criteria. Even though LUBA might agree with a county's argument in its brief that the purpose section of its EFU zoning district is not an approval standard for a farm dwelling permit application, if the challenged decision itself does not interpret the code provision, LUBA must remand the decision for the county to interpret the provision in the first instance. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where comprehensive plan goals are worded as aspirations, and the plan states that whereas plan policies are to be used in daily decision making, plan goals are general directions for the future, LUBA will affirm a local determination that the plan goals are not approval standards for a permit application. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a comprehensive plan policy specifically refers to wetlands identified in "future inventorying processes," it is reasonable for the local government to interpret that plan policy as inapplicable to individual permit decisions not involving wetlands identified on the local government's acknowledged plan inventory. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

31.1.3 Permits – Approval Standards – Standards/Criteria. A local code provision requiring that "consideration * * * be given to [certain specified] factors" does not establish mandatory approval standards for local government decisions, but rather merely lists "factors" which the local government must consider. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

31.1.3 Permits – Approval Standards – Standards/Criteria. As long as comprehensive plan issues relating to the impact of an entire PUD on internal and external roadways were addressed in approving an overall development plan, under applicable local code provisions particular

questions concerning those issues that were not raised in granting overall development plan approval may not be raised during final PUD approval. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

31.1.3 Permits – Approval Standards – Standards/Criteria. LUBA will not assume changes in a PUD proposal between outline development plan approval and preliminary development plan approval constitute a new PUD application (requiring application of then existing approval standards), where there is nothing in the local code to support so characterizing the amended PUD proposal. *DLCD v. Crook County*, 25 Or LUBA 98 (1993).

31.1.3 Permits – Approval Standards – Standards/Criteria. While ORS 227.178(3) identifies the criteria that a city must apply to a permit application, it has *no* bearing on whether the city *must*, following reversal or remand of a permit decision by this Board, (1) accept an amended application reviewable against the criteria in effect when the original application was submitted, or (2) require a new application reviewable against the criteria in effect when the new application is submitted. *Seitz v. City of Ashland*, 24 Or LUBA 311 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where (1) a standard was deleted from the local comprehensive plan prior to the filing of a permit application, (2) the ordinance deleting the standard was remanded by LUBA while the permit application was pending, but (3) the local government made a second decision to delete the standard and that decision was deemed acknowledged prior to the local government's final decision on the permit application, the standard does not apply to the permit application. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. A code provision requiring the existence of legal access is satisfied by an existing access easement, notwithstanding that portions of the existing driveway are located outside the easement. *Mercer v. Josephine County*, 23 Or LUBA 608 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where an applicable code criterion requires that an existing structure have been issued all necessary permits in the past and a party raises a substantial issue concerning whether such is the case, the local government is required to adopt findings explaining why the code criterion is met and those findings must be supported by substantial evidence. *Mercer v. Josephine County*, 23 Or LUBA 608 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. That a recently constructed roadway stream crossing was built to create a pond to satisfy fire district requirements for stored water provides no basis for requiring that a county approve use of such a roadway to provide access to newly created parcels. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. The standards in effect at the time a development application is filed are the standards applicable to approval of such development applications. *Veach v. Wasco County*, 23 Or LUBA 515 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. Comprehensive plan policies and local code requirements establishing standards for construction of streets are not approval standards applicable to comprehensive plan transportation map amendments. *Davenport v. City of Tigard*, 22 Or LUBA 577 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. A local government complies with a plan provision requiring that it "request comments from the School District concerning land use * * * actions," where the local government provides the school district with notice of a proposed PUD preliminary master plan approval. Such a plan provision does not require that the school district make comments, only that comments be requested. *Gerl v. City of Lincoln City*, 22 Or LUBA 512 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where relevant plan provisions require that a local government consider the impacts of a proposed PUD on police and fire protection and transportation routes, a local government must consider such impacts and may not, in finding compliance with such plan provisions, rely solely on the failure of the relevant service providers to provide comments. *Gerl v. City of Lincoln City,* 22 Or LUBA 512 (1992).

31.1.3 Permits – Approval Standards – Standards/Criteria. The factors listed in ORS 822.140(3)(a) to (f) are considerations for the adoption of ordinances regulating the siting or expansion of wrecking yards. These factors are not approval standards for applications for local approval of individual Department of Motor Vehicles wrecking certificates. *Bradbury v. City of Independence*, 22 Or LUBA 398 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a county's approval of a permit is mandated by an order of the circuit court issued pursuant to a writ of mandamus under ORS 215.428(7), the county's decision approving the permit is not a "land use decision," as defined in ORS 197.015(10), because the county was not required to apply its comprehensive plan or land use regulations in adopting that decision. *Gearhard v. Klamath County*, 22 Or LUBA 377 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the height limitation for the underlying zone is a standard applicable to approval of a PUD preliminary development plan, under ORS 227.178(3) the preliminary development plan must comply with the building height limitation in effect when the preliminary development plan application was first submitted. *Gilson v. City of Portland*, 22 Or LUBA 343 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. Conditions imposed on particular property as part of the adoption of a quasi-judicial plan amendment/zone change are potentially applicable to decisions approving development of that property. *Broetje-McLaughlin v. Clackamas County,* 22 Or LUBA 198 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. When determining the applicability of comprehensive plan provisions to individual conditional use decisions, LUBA will first consider whether the comprehensive plan itself contains language which identifies how the provisions in

question are intended to apply to individual conditional use decisions. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the comprehensive plan emphasizes that plan policies are intended to *guide* development actions and decisions, and that the plan must be implemented through the local code to have effect, such plan policies are not approval standards for individual conditional use decisions. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

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

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a code standard provides that the standard applies "to the establishment, maintenance, and operation of" the proposed use, a local government must determine whether the standard is met prior to granting the requested discretionary permits. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where compliance with applicable discretionary permit approval standards will require detailed plans or studies of the type typically required at the time a building permit is requested, it may be possible for the local government to find at the time of discretionary permit approval that it is feasible to comply with the standards and to defer to a later stage selection of the particular technical solution to achieve the standard. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

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

31.1.3 Permits – Approval Standards – Standards/Criteria. A code standard requiring provision of screening by "an ornamental fence, wall, or hedge or landscaped berm in addition to such natural desirable vegetation in the landscaped area," is not met by a 20-foot-high pile of gravel or aggregate. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. A local code statement of an intent not to encourage perpetuation of nonconforming uses and plan policies that are directed at zoning decisions and adoption of implementing land use regulations and planning inventories do not state approval standards applicable to decisions concerning modification of individual nonconforming uses. *Strawn v. City of Albany*, 21 Or LUBA 172 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. Statements from introductory findings to a comprehensive plan chapter are not plan policies or approval standards for land use decisions. *19th Street Project v. City of The Dalles*, 20 Or LUBA 440 (1991).

31.1.3 Permits – Approval Standards – Standards/Criteria. Under ORS 215.428(3), the county flood standards in effect at the time the "application" was first submitted to the county apply. However, for the purpose of determining which county flood standards must be applied, the dispositive "application" is the one to which county flood standards are applicable. *Komning v. Grant County,* 20 Or LUBA 355 (1990).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the code requires certain flood standards to be applied when the county receives "an application for a use or development," and the flood standards authorize the county to deny or require redesign of a proposed development, the flood standards are applicable to approval of the initial development application. *Komning v. Grant County*, 20 Or LUBA 355 (1990).

31.1.3 Permits – Approval Standards – Standards/Criteria. A plan policy that certain uses or activities be encouraged states general objectives, not permit approval criteria. *Benjamin v. City of Ashland*, 20 Or LUBA 265 (1990).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the local code states that required determinations regarding the compatibility and impacts of proposed developments are to be based on *consideration* of certain listed factors, the factors are not themselves approval standards, and no one factor is conclusive. *Thormahlen v. City of Ashland*, 20 Or LUBA 218 (1990).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where a purpose statement in the local code's conditional use provisions states general objectives only, and does not purport to act as an independent approval standard, petitioners' contention that evidence in the record establishes the proposed use is not in compliance with that purpose statement provides no basis for reversal or remand of the challenged decision approving a conditional use permit. *Beck v. City of Tillamook*, 20 Or LUBA 178 (1990).

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

31.1.3 Permits – Approval Standards – Standards/Criteria. The requirement of ORS 215.298(2) that permits for mining of aggregate on EFU-zoned land only be issued for sites included on an inventory in an acknowledged comprehensive plan became effective October 3, 1989 and does not apply to a pending application submitted prior to that date. *Clark v. Jackson County,* 19 Or LUBA 220 (1990).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the comprehensive plan specifies that a particular plan policy is itself an implementing measure, LUBA will conclude that

policy applies as an approval criterion for land use decisions. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

31.1.3 Permits – Approval Standards – Standards/Criteria. Comprehensive plan policies which the plan states are specifically implemented through particular sections of the local code do not constitute independent approval standards for land use actions. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

31.1.3 Permits – Approval Standards – Standards/Criteria. Where the county code explicitly requires that a nonfarm conditional use in an exclusive farm use zone "satisfy" applicable plan goals and policies, and the county plan provides that its goals and policies shall "direct future decisions on land use actions," the plan agriculture goals and policies are applicable to approval of the nonfarm conditional use. *Rowan v. Clackamas County*, 19 Or LUBA 163 (1990).

31.1.3 Permits – Approval Standards – Standards/Criteria. A comprehensive plan policy which states that, in order to minimize conflicts between agricultural and nonagricultural uses, a county "shall develop and implement buffering techniques on the periphery of urban growth boundaries which abut agricultural land," is not an approval standard for a conditional use permit for a nonfarm use far removed from any urban growth boundary. *Weist v. Jackson County*, 18 Or LUBA 627 (1990).

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