

**31.1.4 Permits – Approval Standards – Use of Conditions.** A county provision, which requires the signature of all owners of the subject property on an application for a conditional use permit, may be satisfied by a county-imposed condition requiring that a property owner sign the conditional use permit application before any building permits may issue, where the county provision grants permission to the hearings officer to impose conditions the hearings officer “deems necessary” to fulfill the purpose and intent of the county’s code. *Harris v. Marion County*, 78 Or LUBA 209 (2018).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a county code provision requires that a proposed solar facility may not “create unnecessary negative impacts on agricultural operations,” including dividing a field or multiple fields “in such a way that creates small or isolated pieces of property that are more difficult to farm,” and placing solar facility components on lands in a manner that “could disrupt common and accepted farming practices,” a hearings officer’s decision errs in concluding that a 12-acre solar facility located on a 14.15-acre lot will not create an isolated strip of cultivated land because as a matter of simple arithmetic, some portion of the 14.15-acre lot will remain outside the 12-acre solar facility. *Harris v. Marion County*, 78 Or LUBA 209 (2018).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a county code provision requires a finding that development of a proposed solar facility will “not result in unnecessary soil erosion or loss,” and includes a provision that this finding “*may* be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual,” and “[t]he approved plan *shall* be attached to the decision *as a condition of approval*,” that provision allows an applicant and the county the *option* of relying on a qualified soil and erosion control plan to satisfy the provision and, if that option is followed, by imposing a condition of approval that requires compliance with the approved plan. The phrase “attached to the decision as a condition of approval” is a term of art that does not mean that the plan must be physically attached to the decision. *Harris v. Marion County*, 78 Or LUBA 209 (2018).

**31.1.4 Permits – Approval Standards – Use of Conditions.** LUBA will reject petitioner’s argument that a proposed “art studio” is in reality an “accessory dwelling” in the forest zone in violation of state and local law where the county hearings officer imposed several conditions intended to ensure that the proposed “art studio” would not be used as an “accessory dwelling,” and petitioner’s speculation that the applicant might violate one or more conditions of approval provides no basis for reversal or remand. *Landwatch Lane County v. Lane County*, 78 Or LUBA 272 (2018).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a city code provides that a property owner must, as a condition of permit or partition approval, either provide the improvements or pay into an improvement fund if a street adjoining property without direct access to the street does not have standard full-width improvements, and petitioner argues that the code provision is not applicable to his proposed property partition, LUBA will sustain, in part, petitioner’s challenge upon remand from the Court of Appeals, where the arguments on appeal have evolved and it is apparent that remand is necessary for the hearings officer to adopt findings regarding LUBA’s underlying conclusion that the hearings officer was correct in concluding that the condition requiring a waiver of remonstrance against a street or stormwater facility

improvement was justified under *Clark v. City of Albany*, 31 Or LUBA 375, 380, *aff'd*, 144 Or App 192, 924 P2d 877 (1966), and did not constitute a takings. *Hill v. City of Portland*, 78 Or LUBA 334 (2018).

**31.1.4 Permits – Approval Standards – Use of Conditions.** To determine whether a local government’s conditions of approval satisfy the *Nollan v. California Coastal Comm’n*, 483 US 825, 831-32, 107 S Ct 3141, 97 L Ed 677 (1987), “essential nexus” prong of the two-part test for assessing the constitutionality of a government exaction, the local government must show “(1) what interests would allow the [local government] to deny [the applicant’s proposed land] partition, and (2) how the exaction would serve those interests.” *Hill v. City of Portland*, 77 Or LUBA 317 (2018).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A waiver of remonstrance to the formation of a local improvement district (LID) is not subject to the constitutional exaction analysis because it, by itself, does not result in a loss of petitioner’s property. Conditions of approval, such as a waiver of remonstrance, may be applied by a local government to ensure that a development proposal conforms to the applicable approval criteria or to ensure the enforcement of other local government regulations. *Hill v. City of Portland*, 77 Or LUBA 317 (2018).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where an application for design review approval does not seek approval to operate between the hours of 10 p.m. and 7 a.m., which requires conditional use approval under the city’s land use regulations, the city does not err by failing to impose a condition of approval that prohibits operation of a returnable bottle redemption center during those hours. *Glenwood 2006, LLC v. City of Beaverton*, 76 Or LUBA 162 (2017).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Under ORS 215.296(2), a county may impose conditions of approval to ensure compliance with the ORS 215.296(1) “significant change/cost” standard, in which case the question on appeal to LUBA is not whether the decision establishes that the proposed use complies with ORS 215.296(1), but whether the decision establishes that the proposed use, as conditioned, complies with ORS 215.296(1). *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government could reasonably conclude that a landfill expansion complies with the ORS 215.296(1) “significant change/cost” standard, notwithstanding testimony from an adjacent hay farmer regarding the need for weekly litter patrols to prevent trash entering farm soils or destroying farm equipment, based in part on a condition of approval that requires a second litter fence between the working face of the landfill and adjacent hay fields, where there is no dispute that the existing litter fence is somewhat effective at reducing the volume of wind-blown trash that escapes the landfill, and the second litter fence will reduce that volume further. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government can impose conditions of approval to ensure compliance with the ORS 215.296(1) “significant change/cost” standard that require the applicant to assume the cost or burden of performing actions on nearby farms necessary to prevent a significant change in accepted farming practices on those farms or

significant increase in costs on those farms. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government could reasonably conclude that a landfill expansion complies with the ORS 215.296(1) “significant change/cost” standard, notwithstanding testimony from an adjacent hay farmer regarding the need for weekly litter patrols year-round to prevent trash entering farm soils or destroying farm equipment, based in part on a condition of approval that requires the landfill operator to provide, pay for, or reimburse the farmer for litter patrols prior to harvest, even if the condition does not entirely eliminate the need for litter patrols at non-harvest times. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government could reasonably conclude that a landfill expansion complies with the ORS 215.296(1) “significant change/cost” standard, notwithstanding testimony that the existing intermittent falconry program simply displaces nuisance birds onto nearby farms, based on conditions of approval that require a more intensive falconry program and implementation of integrated techniques recommended by a wildlife biologist to discourage nuisance birds from remaining in the area. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition requiring the landfill operator to buy at market prices the entire crop of berries and cherries produced by a nearby farmer concerned with nuisance bird impacts on her crop is sufficient to reduce to insignificance the alleged adverse impacts of the landfill on the farmer’s farm practices. *Stop the Dump Coalition v. Yamhill County*, 74 Or LUBA 1 (2016).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the authority to impose conditions that specifically applies to temporary use permits does not appear to be broad enough to allow the city to impose a condition of temporary use permit approval regarding vendors, but temporary use permit decisions qualify as Type II decisions, and the development code broadly authorizes Type II decisions to include conditions of approval, a city does not exceed its conditioning authority in imposing the Vendor condition. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a previously approved conditional use is being modified to eliminate one part of the previously approved use, and conditions of that previous approval are to be modified or eliminated, where the original condition was imposed solely to ensure the part of the conditional use that is to be eliminated is consistent with relevant approval standards, no explanation is required to eliminate such conditions of approval. However, where it is not clear whether the original condition of approval was imposed at least in part to ensure that part of the conditional use that is to be retained is consistent with one or more relevant approval standards, and an issue is raised concerning whether the proposed modification or elimination of the condition would cause the modified conditional use to violate one or more applicable approval standards, the local government is obligated to explain why the condition can be eliminated or modified without causing the modified conditional use to no longer comply with relevant approval standards. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

**31.1.4 Permits – Approval Standards – Use of Conditions.** LUBA will not assume a condition imposing a limit on the number of trips a proposed development will be allowed to generate until traffic signals are installed at two nearby intersection will not be effective to serve the intended purpose simply because one petitioner cannot recall ever seeing a condition like that or another petitioner currently has difficulty backing from her driveway onto one of the affected streets. *Lowery v. City of Portland*, 68 Or LUBA 339 (2013).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A city council is entitled to rely on its transportation bureau’s recommendation that two intersections be signalized and the timing of an existing signal be modified to address possible transportation impacts of a proposed development of land, where no party raised any question whether the signal could be modified and the two intersections signalized. *Lowery v. City of Portland*, 68 Or LUBA 339 (2013).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Failure to impose a condition of approval requiring the applicant to modify a settlement agreement with neighbors to allow a second dwelling on a rural residential property is not a basis for remand, where the petitioner fails to establish that the settlement agreement limits the number of dwellings allowed on the property. *Purtzer v. Jackson County*, 67 Or LUBA 205 (2013).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the local code allows the local government to impose conditions of approval to ensure that a proposal conforms to applicable development standards, and nothing cited by the petitioner prohibits the local government from approving an application for development subject to conditions of approval or relying on those conditions to find that the proposal, as conditioned, complies with applicable development standards, the petitioner’s arguments that the city should not have imposed conditions of approval provide no basis for reversal or remand of the decision. *Von Clemm v. City of Portland*, 66 Or LUBA 379 (2012).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Although a local government may not defer a required finding of compliance with a quasi-judicial permit approval standard to a later date where there will be no hearing, a local government’s decision to impose a condition of approval that will require that some action be taken in the future after hearings have concluded does not necessarily mean the local government has deferred the required finding of compliance. *Johnson v. City of Gladstone*, 65 Or LUBA 225 (2012).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the county code requires the signature of all owners of the property, and to ensure compliance with respect to a proposed pipeline crossing multiple properties the county imposes a condition requiring that the approval becomes effective only when the utility provider supplies all required signatures, an ambiguity in the condition regarding whether all signatures of all property owners are required for the approval to become effective is not a basis to remand the decision, where it is reasonably clear from the condition and findings that the county intended that all signatures of all owners be obtained before the approval becomes effective and building permits for any part of the pipeline can be obtained. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A county errs in deferring a county code requirement to obtain the signatures of all property owners to a subsequent administrative proceeding that does not provide notice or opportunity for public input, in which staff is granted the discretion to determine whether a circuit court order condemning an easement or less-than-fee interest in property “obviates” the need to obtain the signature of the fee owner. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A county errs in deferring the requirement to obtain the signatures of all property owners to a subsequent administrative proceeding, in which staff are granted the discretion to determine whether the county signature requirement is preempted or rendered invalid under federal law. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a maximum setback shown on a preliminary plat was not required by law but rather was voluntarily agreed to by the property owner as an accommodation to the Oregon Department of Fish and Wildlife prior to its and the county’s adoption of a setback requirement to protect wildlife habitat, and there is no evidence that the setback was to be measured in any particular way from the county road, a county need not require that the setback be measured in precisely the way shown on the plat. In that circumstance, the county may look at the underlying purpose for the setback and not require that the setback be

measured solely from a short segment of the partitioned property's county road frontage. *Kuhn v. Deschutes County*, 62 Or LUBA 165 (2010).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Even if a local government lacks authority under its code to modify the location of a driveway allowed under a previous permit approval, and can only modify express conditions of permit approval, petitioner does not demonstrate error where the permit included an express condition of approval limiting the use to that proposed by the applicant, including the location of the driveway, and thus modifying the location is a modification of the condition of approval. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a zoning ordinance expressly prohibits a county from issuing a use permit as a precondition of commencing mining until the applicant secures a state agency approval for a reclamation plan, the local government's failure to include such a requirement in the conditions attached to its conditional use and site plan approval decision is harmless error. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Conditions of approval are not too vague under the Court of Appeals' reasoning in *Sisters Forest Planning Committee v. Deschutes Cty.*, 198 Or App 311, 108 P3d 1175 (2005), where the conditions of approval are not any more vague than many of the standards they were imposed to address. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a road improvement condition is imposed on a two-phase subdivision and the county subsequently approves phase I without the required road improvement and approves a partition in place of phase II without requiring compliance with the road improvement condition, the road improvement condition may not be extended to apply to a partition of one of the parcels in the partition that was approved in place of phase II of the subdivision. *MEK Properties, LLC v. Coos County*, 61 Or LUBA 360 (2010).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where there is substantial evidence in the record that an applicant is not precluded as a matter of law from obtaining state and federal permits, a local government does not err in finding that an applicable comprehensive plan provision that has the legal effect of requiring the applicant to secure state and federal permits is satisfied by imposing a condition of approval that the applicant secure such permits. *Citizens for Responsible Development v. City of The Dalles*, 59 Or LUBA 369 (2009).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government is not obligated under ORS 197.522 to utilize a rough sketch of a possible subdivision configuration to impose conditions to grant subdivision approval where the sketch would only permit approval of a speculative subdivision that is only potentially consistent with other subdivision approval criteria. *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the permission of an adjoining private landowner is necessary to provide access to proposed development, the applicant need not submit evidence that the adjoining landowner has granted permission or that it is feasible for the landowner to grant permission, as long as such permission is not precluded as a matter of law and the local government imposes conditions ensuring that permission will be obtained prior to final development approval. *Holbrook v. City of Rockaway Beach*, 58 Or LUBA 179 (2009).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A code provision stating that permitted types of traffic impact mitigation “may include such improvements” as paving, curbing, contributions to traffic signals, etc. is not an exclusive list, and does not preclude a county from requiring an applicant to contribute money toward a future improvement project instead of requiring the applicant to actually construct the improvement. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Remand is necessary where a county’s findings approving a personal use airport rely heavily on a proposed condition limiting operations at a personal use airport to 20 flights per month, but the county failed to impose such a condition. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A code provision requiring that the city shall not grant permit approval for property with an existing violation unless the violation is rectified as part of the proposed development may be satisfied by a condition of approval requiring a property line adjustment that will rectify the violation. The local government is not required to deny the permit application, require the applicant to obtain a property line adjustment, and then file a second permit application. *McConnell v. City of Grants Pass*, 55 Or LUBA 280 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a city approves a floodplain permit to construct a driveway within a floodplain, the city does not err in conditioning approval on obtaining a separate encroachment permit from the city to authorize encroachment of a portion of the driveway into a public right-of-way. Such a condition does not impermissibly “defer” any determination of compliance with the floodplain permit before the city. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Provided local law does not dictate a different result, local governments generally may approve a proposed development of land after providing any required notice and hearings—without finding that the proposal complies with all relevant approval criteria—so long as the local government defers the required findings to a later stage and ensures that a second opportunity for any required notice and public hearing is provided before the required findings are adopted at that later stage. *Meadow Neighborhood Assoc. v. Washington County*, 55 Or LUBA 472 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** It may not be appropriate to grant conditional approval while deferring required findings to a subsequent approval stage, even where there will be a full public right to participate in the subsequent approval stage, where the initial decision has the effect of rendering the subsequent review moot or prevents meaningful review. However, where the initial decision has no legal or preclusive effect on the subsequent review, such conditional approval provides no basis for reversal or remand. *Meadow Neighborhood Assoc. v. Washington County*, 55 Or LUBA 472 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government finds that an access standards is met and imposes a condition of approval requiring a formal survey of property to ensure that access to a proposed subdivision does not infringe on adjacent property, that is not the same thing as deferring a finding of compliance with that access standard to a later stage of the approval process. *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Approval of a cellular tower with the roadway that will be necessary to provide access with a condition of approval that the applicant seek and obtain an easement to construct the road is appropriate, where the record demonstrates that it is feasible for the applicant to secure the required easement. *Skyliner Summit at Broken Top v. City of Bend*, 54 Or LUBA 316 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government impermissibly defers a finding of compliance with an approval standard requiring that the proposed use will not impose an undue burden on the transportation system, where the local government makes no findings of compliance with respect to a disputed intersection, but instead imposes conditions of approval requiring the applicant to submit a traffic study to determine impacts on the intersection, and to execute a development agreement determining the applicant's contribution to improve the intersection, under a process that does not provide for a hearing or public participation. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** The first of three options under *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992), is to find that “feasible solutions to identified problems exist” and impose necessary conditions to ensure compliance with approval standards. LUBA will reject a claim that a local government has implicitly exercised the first option under *Rhyne*, where there is no evidence in the record that the proposed use complies with a particular approval standard, and no findings of compliance or feasibility of compliance. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government errs in deferring a requirement for submission of a geotechnical analysis to a later stage of the proceedings that does not provide for notice or hearing. *Township 13 Homeowners Assoc. v. City of Waldport*, 53 Or LUBA 250 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of approval requiring certain actions may not be necessary, where the decision approves a site plan or similar document that proposes such actions for approval. However, that principle does not apply to



recommendations in a forest plan that was submitted into the record but was not submitted for approval and was not approved. To have binding effect, recommendations in the forest plan must be imposed as specific conditions of approval. *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Under *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992), one of the options that is potentially available to a local government facing evidentiary uncertainty regarding whether a land use approval standard is met is to find that feasible solutions exist to identified problems and impose conditions if necessary to ensure that those feasible solutions are later developed and implemented. *Gillette v. Lane County*, 52 Or LUBA 1 (2006).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government finds that a local approval standard will be met by imposing conditions of approval that the local government itself will ultimately enforce, the record must demonstrate that it is feasible for the proposed use to satisfy that condition. However, where a condition of approval requires that an applicant secure a state agency permit, the record need only demonstrate that the state agency permit is not precluded as a matter of law. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

**31.1.4 Permits – Approval Standards – Use of Conditions.** While the fact that a proposed development would be inconsistent with private CC&Rs is not a basis, in and of itself, for reversal or remand, the fact that a condition of approval necessary to meet approval criteria is not feasible because the condition cannot be satisfied because it violates CC&Rs may be a basis for reversal or remand. *Butte Conservancy v. City of Gresham*, 51 Or LUBA 194 (2006).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a petitioner claims that a sewer provider does not have an easement across his property to reach necessary access to a sewer main, a finding that such an easement does exist, that the easement could be condemned if necessary, and imposition of a condition of approval requiring that the easement be obtained is sufficient to establish that it is feasible to provide sewer service. *Stoloff v. City of Portland*, 51 Or LUBA 560 (2006).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Technical revisions to a tentative subdivision plan need not be decided with public participation, and a condition of tentative subdivision plan approval requiring that, prior to submittal of the final plat, county staff will “red-line” the plat and return to applicant’s surveyor for corrections is not an impermissible deferral of findings to the second step of a two-step process. *Angius v. Washington County*, 50 Or LUBA 33 (2005).

**31.1.4 Permits – Approval Standards – Use of Conditions.** There is no generally applicable requirement that conditions of approval be stated in clear and objective language, or impose only mandatory, unambiguous, easily enforced obligations. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Failure to adopt findings addressing a comprehensive plan policy requiring provision of preferential carpool and vanpool parking for

new commercial uses is not a basis for remand, where the code leaves details of parking lot construction and striping to the city engineer at building permit review, the challenged decision requires the applicant to comply with all code parking requirements, and the petitioner offers no reason that the city engineer cannot require the applicant to provide carpool and vanpool parking as part of building permit review. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a county code requires the “development proposal” to include a survey and assessment of archaeological sites and, if indicated, a management plan, a condition requiring that a management plan be completed prior to final plat approval is not permissible where neither the code nor the condition provides an opportunity for public participation in final plat approvals. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

**31.1.4 Permits – Approval Standards – Use of Conditions.** In applying a standard that requires that development within 100 feet of a wetland minimize wildlife impacts, a county commits no error in finding that it is uncertain whether there are wetlands present and imposing a condition of approval that the subdivision applicant prepare a wetlands study and demonstrate that the standard is satisfied in a subsequent quasi-judicial administrative review before final plat approval. *Willhite v. Clackamas County*, 46 Or LUBA 340 (2004).

**31.1.4 Permits – Approval Standards – Use of Conditions.** As a general rule, local governments are not obligated to approve development that is inconsistent with applicable criteria, even if conditions of approval may be imposed that would render the proposal consistent with applicable criteria. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government’s decision that it is feasible to satisfy an approval criterion that a private road can be dedicated to the public, by imposing conditions of approval, is supported by substantial evidence where: (1) the underlying easement requires a public dedication upon request; (2) the ownership of all property underlying the proposed road is demonstrated; and (3) all owners are bound by the public dedication request. *Sisters Forest Planning Comm. v. Deschutes County*, 45 Or LUBA 145 (2003).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a city requires that a property owner grant an easement across its property to provide pedestrian access between a vacated street and an existing street as a condition of development approval, and determines that the easement will satisfy city requirements for connectivity, the city has established a nexus between the exaction and the city’s legitimate governmental interest in ensuring adequate transportation connectivity. *Hallmark Inns v. City of Lake Oswego*, 43 Or LUBA 62 (2002).

**31.1.4 Permits – Approval Standards – Use of Conditions.** In requiring an easement for a pedestrian walkway as a condition of development approval, a city may consider the impacts that reasonably flow from the approval granted, including the possible use of the walkway by employees of the development to access adjoining streets and by residents of neighboring properties to access the development on foot or by bicycle. *Hallmark Inns v. City of Lake Oswego*, 43 Or LUBA 62 (2002).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A city adequately quantifies the impact of a proposed development on the area’s bicycle and pedestrian transportation system and establishes that an exaction for a pedestrian walkway across the subject property is roughly proportional to the impact of the development where the city: (1) considers the types of uses in the vicinity and concludes that the walkway is necessary to allow access to a transit stop and other neighborhood amenities; (2) explains that persons working at or patronizing the development would be impeded from accessing a neighborhood attraction to the west of the subject property without the walkway; and (3) explains that the subject property could be developed as six individual lots, with sidewalks required for each, and the decision to combine the lots into one development has impacts on the city’s transportation system that the required easement ameliorates. *Hallmark Inns v. City of Lake Oswego*, 43 Or LUBA 62 (2002).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A finding that a proposed parking layout may be relocated to expand the septic drainfield does not conflict with a condition requiring that parking shall be provided as shown in the site plan, where it is clear that the purpose of the condition is to satisfy a standard addressing the number of parking spaces, and not the location of the parking lot. *Baker v. Lane County*, 43 Or LUBA 493 (2003).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a permit approval criterion requires that certain driveway improvements be made to ensure emergency vehicle access, it is error to simply approve the permit conditioned on future construction of the required driveway improvements, where there is focused testimony during the permit evidentiary hearing that the easement the permit applicant intended to rely on would not permit the required improvements. The permit findings must address the testimony and explain why it is reasonable to assume the required improvements can be made. *Harshman v. Jackson County*, 41 Or LUBA 330 (2002).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A reasonable person could conclude that a combination of conditions requiring that most classes begin outside the peak morning hour and prohibiting drop-offs during the peak morning hour is sufficient to ensure that drop-offs associated with a proposed high school will not impact a failing intersection during the peak morning hour. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the local government adopts a finding of current compliance and imposes conditions to ensure compliance with an approval criterion, that those conditions require additional informal review by local government staff does not mean that the local government has impermissibly “deferred” a finding of compliance with that criterion to a later stage without notice or hearing. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Draft transportation and parking demand plans for a proposed school are substantial evidence supporting a finding of compliance with a “safe streets” approval standard, notwithstanding that the conditions of approval require that the school submit and city staff approve *final* plans in which the city might impose additional or different terms. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Under a code standard that allows only *de minimis* traffic impacts on failing intersections, the county is in a position to find compliance with the standard only if it quantifies the traffic volume that is expected to pass through intersections notwithstanding conditions designed to avoid impacts and determines that such traffic volume is *de minimis*, or if it imposes conditions sufficient on their face to ensure that expected impacts will be *de minimis*. *K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Conditions imposed to ensure that only *de minimis* traffic volumes from a proposed recycling facility impact nearby failing intersections during certain times are insufficient and unenforceable, where the county’s decision fails to (1) define what *de minimis* traffic volumes are, (2) specify the times when the conditions apply, and (3) impose conditions or identify solutions that a reasonable person would find adequate to ensure that traffic associated with the facility uses a longer alternate route rather than the short direct route through failing intersections. *K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a city’s approval of an adjustment to a building facade setback standard is conditioned in part on a requirement that the approved building permit reflect the same architectural amenities depicted in exhibits submitted with the adjustment application, that condition of approval is sufficient to ensure that those amenities will actually be constructed. *Lee v. City of Portland*, 40 Or LUBA 498 (2001).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a county’s findings simply state that conditions are being imposed to address identified environmental impacts from a proposed aggregate extraction site that must be addressed under local approval criteria, but the conditions that are imposed have nothing to do with the cited environmental concerns, the decision must be remanded to the county. *Donnell v. Union County*, 39 Or LUBA 419 (2001).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A decision that does not apply the statewide planning goals, a comprehensive plan provision or a land use regulation, but rather applies a condition of approval in a previously approved land use permit, does not fall within the statutory definition of a “land use decision.” *Frevach Land Company v. Multnomah County*, 38 Or LUBA 729 (2000).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local code provision allows approval of a conditional use notwithstanding significant adverse impacts on abutting properties if the proposed use is in the public interest and conditions are imposed to balance any conflicting interests, the local government’s determination of what conditions are needed to mitigate conflicts entails judgment calls that are not subject to precise calculation. LUBA will affirm the local government’s decision regarding such mitigating conditions if a reasonable person could conclude, based on the evidence presented, that the conditions are appropriate to balance the conflicting interests. *Rogue Valley Manor v. City of Medford*, 38 Or LUBA 266 (2000).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Imposition of an ineffective condition as part of a comprehensive plan map amendment may result in remand where the condition is necessary to ensure compliance with a relevant approval criterion. However, such an ineffective condition does not provide a basis for reversal or remand where it is not shown that the condition is necessary to ensure compliance with plan map amendment approval criteria. *Neighbors for Livability v. City of Beaverton*, 37 Or LUBA 408 (1999).

**31.1.4 Permits – Approval Standards – Use of Conditions.** In applying a local provision based on the no significant change/increased cost standard, the local government is not required to perform the impossible task of proving a negative or to quantify how much imposed conditions will reduce conflicts with farm uses below a certain threshold. It need only affirmatively consider the impacts of a proposed use on farm or forest practices, and in so doing, consider whether the use will force a significant change or significantly increase the cost of those practices. *Gutoski v. Lane County*, 34 Or LUBA 219 (1998).

**31.1.4 Permits – Approval Standards – Use of Conditions.** When a local governing body determines that a condition imposed in connection with an earlier land use decision either has or has not been complied with, but does not base its determination on the interpretation and application of land use regulations, the determination is not a land use decision over which LUBA has jurisdiction. *Mar-Dene Corp. v. City of Woodburn*, 33 Or LUBA 245 (1997).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A county impermissibly defers a finding that a proposed dwelling complies with applicable land use design standards when, in the absence of substantial evidence supporting a finding of compliance, the county imposes a condition that the dwelling’s compliance with design standards be reviewed at a later building permit stage. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the city makes a determination that it is feasible to comply with a local code standard requiring that each lot in a proposed subdivision be buildable, it may defer addressing engineering details to a later date. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).

**31.1.4 Permits – Approval Standards – Use of Conditions.** When compliance with a particular code standard is deferred, a condition to ensure eventual compliance is required even when compliance depends upon the local government rather than the applicant. *DLCD v. Tillamook County*, 33 Or LUBA 163 (1997).

**31.1.4 Permits – Approval Standards – Use of Conditions.** The county properly approved a conditional use permit for a golf course and recreational vehicle campground where it determined the feasibility of compliance with an applicable approval standard and imposed a condition to ensure that compliance. *Just v. Linn County*, 32 Or LUBA 325 (1997).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local code requirement that a solid waste disposal site must be screened from view is satisfied by a condition requiring the applicant to screen the facility itself, but not the entire property. *Richards-Kreitzberg v. Marion County*, 32 Or LUBA 76 (1996).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where there is no evidence regarding the nature and scope of a proposed development, the city cannot rely upon conditions of approval in finding compliance with a comprehensive plan policy. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A city cannot determine there will be compliance with a criterion prohibiting adverse impacts on residential zones by imposing a condition that requires abatement of that adverse impact. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

**31.1.4 Permits – Approval Standards – Use of Conditions.** In order to satisfy a local code provision that requires compliance with state agency codes, the city must find which state codes contain approval criteria, and also find that as a matter of law, the applicants are not precluded from obtaining such state agency permits. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Conditioning approval on the satisfactory outcome of a separate administrative process does not preclude a finding of compliance with a zoning code standard, as long as compliance is found to be feasible and that finding is based on substantial evidence. *McArthur v. Lane County*, 31 Or LUBA 309 (1996).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Conditions of approval requiring Tri-Met to install restrooms and drinking fountains for the westside corridor project are not “reasonable and necessary” within the meaning of Oregon Laws 1991, chapter 3, section 7(1)(b), because those improvements are not required by the final environmental impact statement, and the project can be completed and operate without the required improvements. *Tri-County Metro Trans. Dist. v. City of Beaverton*, 31 Or LUBA 214 (1996).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Conditions of approval requiring Tri-Met to install an enhanced trackway and esplanade for the westside corridor project are not “reasonable and necessary” within the meaning of Oregon Laws 1991, chapter 3, section 7(1)(b), because the project can be completed and operate without the required improvements. *Tri-County Metro Trans. Dist. v. City of Beaverton*, 31 Or LUBA 214 (1996).

**31.1.4 Permits – Approval Standards – Use of Conditions.** If a city relies on the preservation of open space to make a finding that there will be adequate buffering between commercial and

residential uses, the city must condition approval on the designation of a specifically described parcel as open space. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Whether or not a local government has authority to design and construct a road owned by another jurisdiction has no bearing on whether the local government can condition development approval upon a finding that the road be able to accommodate a proposed development. *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition imposed on a mineral and aggregate operation does not violate ORS 215.253(1) simply because it has the potential of impacting some farm uses. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Nothing in ORS chapter 215 requires a conditional use process before a county can impose on the application of a mineral and aggregate overlay zone conditions requiring minor road improvements of the type listed in ORS 215.283(1)(L), which “may be established” in any EFU-zoned area. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government decision that states it “reflects the historic use of” the subject property, and imposes certain limitations on the operation of a nonconforming use on that property, is not the equivalent of a determination regarding the nature and extent of the use existing on the property when restrictive zoning was first applied. *Suydam v. Deschutes County*, 29 Or LUBA 273 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government may properly grant permit approval based on either (1) a finding that an applicable approval standard is satisfied, or (2) a finding that it is feasible to satisfy an applicable approval standard and the imposition of conditions necessary to ensure that the standard will be satisfied. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government relies on particular features to assure compliance of a proposed use with approval standards, it must assure there is an adequate reason to assume such features actually will be part of the use. More than testimony by the applicant expressing willingness to provide such features is required. *Penland v. Josephine County*, 29 Or LUBA 213 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** When the evidentiary support for imposition of a condition of approval is challenged, LUBA must determine whether the evidence in the record would lead a reasonable person to conclude there is a need for the condition to further a relevant planning purpose. *Carter v. Umatilla County*, 29 Or LUBA 181 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the local government wishes to defer a determination of compliance with an applicable approval standard it must ensure that the later approval process provides any statutorily or locally required notice and an opportunity for input. *Hilderbrand v. Marion County*, 28 Or LUBA 703 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where conditions of a prior nonforest dwelling approval do not require a determination of compliance with any discretionary land use standard, the fact that a building permit may only be issued after it is determined that such conditions are satisfied provides no basis for LUBA’s jurisdiction. *Broderson v. Jackson County*, 28 Or LUBA 645 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** There is no generally applicable legal standard requiring a local government to have a “substantial or reasonable basis” for declining to impose a condition proposed by a party to a local government land use proceeding. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the challenged decision does not determine the proposal complies with mandatory approval standards applicable to the proposal or that compliance with such standards is feasible, the local government may not defer a determination of compliance with such standards to the city engineer, to be made in a process not involving notice or hearing. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a decision to eliminate conditions of approval requires local review under code zone change standards, the decision is a land use decision, and not a limited land use decision. *Lamm v. City of Portland*, 28 Or LUBA 468 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Limitations on a local government’s authority over development applications must be specifically expressed in the local code. *Lamm v. City of Portland*, 28 Or LUBA 468 (1995).

**31.1.4 Permits – Approval Standards – Use of Conditions.** In order to defer determinations of compliance with mandatory approval standards to a later stage where no public hearing is contemplated, the local government must first determine that compliance with those standards is possible. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** In addressing a code requirement concerning visual impacts, a local government is not required to establish that every condition imposed will mitigate all visual impacts. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Findings need not be perfect, and conditions may be imposed to assure compliance with approval standards. However, LUBA must be able to determine from the findings, conditions and evidence in the record that the relevant approval standards are met. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** If a condition is *necessary* for consistency with a final order approving a light rail transit (LRT) facility, under Oregon Laws 1991, chapter 3, section 7(1)(b), a local government is *required* to impose such a condition in approving a local permit for the LRT facility, and the limitations in the second sentence of that section do not apply. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).



**31.1.4 Permits – Approval Standards – Use of Conditions.** Under Oregon Laws 1991, chapter 3, section 7(1)(b), a “necessary” condition is a condition required for a light rail transit project to meet applicable permit criteria in a local government’s comprehensive plan or code. However, such a condition cannot be imposed if by itself, or together with other conditions, it would prevent implementation of the approved light rail transit project. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of approval that either a portable or flush toilet be provided, depending on what DEQ rules require, is sufficient to assure compliance with a code requirement that the site be served by adequate sewerage facilities, where petitioner does not contend that a flush toilet cannot be approved under DEQ rules, but rather argues only that the existing portable toilet violates applicable rules. *Cole v. Columbia County*, 28 Or LUBA 62 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A code section authorizing conditions “requiring design features which minimize environmental impacts \* \* \*” is sufficient authority to impose a condition that an identified wetland be crossed by a bridge rather than a road placed on fill. Where the record includes testimony expressing concern about placing fill in the wetland, the record is sufficient to show such a condition furthers a valid planning purpose. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** ORS 197.763(1) does not require petitioners to raise with specificity, prior to the close of the evidentiary hearing, issues regarding aspects of a condition of approval that were not imposed until the governing body adopted the local government’s final decision. *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Absent other limitations, if a local code gives local decision makers authority to impose conditions of approval that protect the public from adverse effects associated with a proposed use, this authority to impose conditions is not limited to conditions required to establish compliance with a particular permit approval standard. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Code provisions that allow a local government to impose conditions of approval “reasonably calculated to fulfill public needs,” and to require right-of-way dedication and road improvements, authorize the local government to require modification of a proposed subdivision plat to eliminate a one-foot “spite strip” separating a new street serving the subdivision from the adjoining property. *J.C. Reeves Corp. v. Clackamas County*, 27 Or LUBA 318 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of approval requiring elimination of a one-foot “spite strip” separating a new street serving a subdivision from the adjoining property is reasonably related to the impacts of the proposed subdivision and, therefore, does not effect an unconstitutional “taking” under either the United States or Oregon Constitution. *J.C. Reeves Corp. v. Clackamas County*, 27 Or LUBA 318 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a proposed subdivision will add traffic to an abutting arterial street, although direct access to the subdivision will be provided by local streets, a local government approval condition requiring that the developer construct sidewalks, storm sewers and other frontage improvements along the portion of the arterial abutting the subdivision is reasonably related to the impacts of the proposed subdivision and is not an unconstitutional taking. *J.C. Reeves Corp. v. Clackamas County*, 27 Or LUBA 318 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government relies on conditions to ensure that use of an approved parking structure is limited to “short term parking,” as required by its code, any interpretations of code provisions necessary to support its determination that the code limitation to “short term parking” is satisfied must be set out in the challenged decision or supporting findings, not in the local government’s brief. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Although a local government may impose conditions and rely on such conditions to determine a development application meets applicable approval standards, there is no general requirement that a local government *must* apply conditions to modify a proposal so that applicable standards are met, rather than deny the application. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Elevation plans submitted by an applicant to establish compliance with code “physical compatibility” requirements become part of the applicant’s conditional use proposal, and it is not necessary for the local government to impose compliance with these plans as a condition of approval in order to rely on them in approving the proposed development. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** That a condition of approval contains an ambiguous term does not, of itself, establish the condition is unconstitutionally vague. Rather, some ambiguity is tolerated where the ambiguous language of a condition is circumscribed by reference to specific, non-vague regulations. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** The issue in determining whether a condition of approval is unconstitutionally vague is whether a reasonable applicant could understand what must be done to comply with the condition. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Read in the context of a local code scheme governing LIDs which includes a specific remonstrance process, a condition of permit approval requiring that petitioner not file a remonstrance against the formation of an LID means only that a remonstrance under the local code may not be filed, but does not prohibit the presentation of oral objections or the filing of any other written objection to a proposed LID. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where petitioners do not challenge findings that a condition of approval is reasonably related to mitigation of impacts associated with

the particular development proposal, petitioners fail to establish the challenged action is overbroad. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of approval limiting petitioners’ rights to remonstrate against LIDs does not impermissibly infringe on petitioners’ First Amendment rights to freedom of expression where the condition does not require the local decision maker to disregard petitioners’ political views about LIDs and leaves petitioners free to object to the formation of a proposed LID in a variety of ways other than by remonstrance. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of permit approval that prohibits remonstrance against the formation of an LID, but does not proscribe other kinds of objections to an LID, only limits the manner in which expression may be exercised and does not directly and absolutely restrain the exercise of free expression in violation of Article I, section 8, of the Oregon Constitution. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of permit approval prohibiting remonstrance against the formation of an LID does not violate ORS 260.665 (protecting voting rights) where petitioners are neither prevented from voting nor required to vote in any particular manner. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government determined, in a proceeding satisfying state and local requirements for notice and hearing, that the proposed use will comply with applicable access standards, based on conditions requiring subsequent preparation and approval of a plan for access improvements necessary to solve an identified sight distance problem, compliance with such approval conditions may be determined by the local government technical staff, without notice or hearing. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government relies on particular features of a proposed use to assure compliance with approval standards, it must assure there is an adequate reason to assume such features actually will be part of the proposal. *Collins v. Klamath County*, 26 Or LUBA 434 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government denies a request to remove a condition placed on a previous land use approval, based on its determination that *neither* of two sets of circumstances giving rise to the condition has changed, and petitioner challenges the local government’s determination concerning only *one* set of circumstances, LUBA will affirm the local government’s decision. *Livingston v. Jackson County*, 26 Or LUBA 395 (1994).

**31.1.4 Permits – Approval Standards – Use of Conditions.** ORS 215.130(2) allows cities to adopt contingent plan and zoning designations for property to be annexed in the future, but it does not allow cities to grant contingent permits for property to be annexed in the future. *Recht v. City of Newport*, 26 Or LUBA 316 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where LUBA determines a condition of approval was erroneously imposed, but rejects all other assignments of error, a remand rather than reversal nevertheless is required, if LUBA is unable to determine whether the local government relied on the erroneous condition of approval in concluding that all applicable approval criteria are met. *Louisiana Pacific v. Umatilla County*, 26 Or LUBA 247 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government order granting subdivision preliminary plat approval defers a determination of compliance with a particular approval standard, and also allows final plat approval to occur in phases, the local government may interpret that order as allowing it to grant final plat approval for a phase, so long as each lot in the phase for which final plat approval is sought has been found to comply with the deferred standard. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the applicant submits a drainage plan for a proposed subdivision to a local government, and the local government relies on that drainage plan in determining compliance with a local drainage standard in its order granting subdivision approval, the drainage plan is effectively made part of the approved subdivision plat. In these circumstances, it is not necessary for the local government to adopt a separate condition of approval requiring compliance with the drainage plan. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** That an approved wetland mitigation plan includes property that was not within the development application, does not mean that a local government may not rely upon the wetland mitigation plan as a condition of approval of the development application. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** That a challenged decision granting subdivision approval fails to demonstrate feasibility of compliance with an approval condition requiring that a subdivision street provide “no worse” access to an adjoining property than is currently provided to that adjoining property provides no basis for reversal or remand, where assuring “no worse” access is not required by any applicable approval standard. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of partition approval requiring consolidation of existing driveways into a single driveway to address comprehensive plan and local code policies concerning traffic safety is justified, even though the property is developed and new development is not proposed as part of the partition request, where the property could be developed more intensively in the future. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of partition approval requiring that three existing driveways presently serving property to be partitioned be consolidated into a single driveway does not “take” a cognizable property interest, within the meaning of the Fifth Amendment to the U.S. Constitution or Article I, section 18, of the Oregon Constitution. Such a condition simply requires that a property owner exercise the property right of access differently. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where there is a reasonable relationship between the development potential of a parcel to be divided and the impacts reasonably attributable to the divided parcel on the one hand, and the city’s need to respond to legitimate traffic concerns on the other, and it would be more difficult to address such concerns when there are three parcels rather than a single parcel, notwithstanding the lack of current plans to develop the property further, a condition requiring consolidation of existing driveways is appropriate. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A condition of approval requiring that not more than 1000 square feet of an existing structure be partitioned for use in conjunction with a home occupation is sufficient to assure compliance with a local code provision requiring that home occupations occupy no more than 1000 square feet of an accessory building. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A permit approval condition that amendments to the approved master plan must be approved by the planning department is not inconsistent with, and does not eliminate, the right established by the local code to appeal a decision by the planning director on such an administrative action to the planning commission. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Conditions may be imposed on a proposed activity where the conditions are authorized by the local code, are reasonably related to the proposed use and reasonably further a legitimate planning purpose. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a condition of approval imposing a fine for a violating the terms of a conditional use permit, regardless of the amount of actual damage sustained due to the violation, is not specifically authorized by the local code, such condition is beyond the local government’s authority to impose. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** While a local government is free to impose conditions to enable it to approve a development application, it is not required to do so and may, instead, chose to deny development that, as proposed, does not satisfy relevant standards. *Decuman v. Clackamas County*, 25 Or LUBA 152 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Under ORS 197.828(2)(a), when the evidentiary support for a condition of approval is challenged, LUBA must determine whether the evidence in the record could lead a reasonable person to conclude that considering the impacts of

the proposed development, there is a need for the condition to further a legitimate planning purpose. *Sherwood Baptist Church v. City of Sherwood*, 24 Or LUBA 502 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Both the Oregon and U.S. Constitutions require that there be a “reasonable relationship” between a challenged condition of approval and the impacts of, or needs generated by, the proposed development. *Sherwood Baptist Church v. City of Sherwood*, 24 Or LUBA 502 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** The U.S. Constitution imposes a requirement that there be an “essential nexus” between the legitimate public purpose for which a development application could be denied, and the condition imposed. *Sherwood Baptist Church v. City of Sherwood*, 24 Or LUBA 502 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** It is a local government’s final written decision that is subject to LUBA’s review. That conditions imposed in the local government’s final written decision were not discussed in the decision maker’s deliberations does not provide a basis for reversal or remand. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government may, by imposing conditions or otherwise, defer a final determination concerning compliance with an applicable permit approval standard to a later stage. However, if the decision to be made at the later stage is itself discretionary, the approval process for the later stage must provide the statutorily required notice and opportunity for hearing, even though the code may not require such notice and hearing. *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local government finds that approval criteria will be met if certain conditions are imposed, and those conditions are requirements to obtain state agency permits, a decision approving the subject application simply requires that there be substantial evidence in the record that the applicant is not precluded from obtaining such state agency permits as a matter of law. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Absent code provisions to the contrary, that local government decision makers retain authority to impose conditions of approval, does not require that they develop conditions to limit or modify an application to achieve compliance with applicable approval criteria. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

**31.1.4 Permits – Approval Standards – Use of Conditions.** When conducting a multistage permit approval process, if a local government finds compliance, or feasibility of compliance, with all approval criteria during the first stage (where statutory notice and public hearing requirements are observed), it is entirely appropriate to impose conditions of approval to assure those criteria are met and to defer responsibility for assuring compliance with those conditions to planning and engineering staff as part of a later stage. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the local code states “nothing construed herein shall be deemed to require the [local government] to grant a Conditional Use Permit,” a local government may deny a conditional use permit if the development, as proposed, does not satisfy applicable approval standards. In such instance, the local government is not *required* to impose conditions on the proposed development to attain compliance with the approval standards. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the plan map designation for property is changed in a manner that allows residential development which could greatly exceed the capacity of schools serving the property, the plan map amendment must be conditioned in some way to limit the impact on schools or to require that such limits be imposed prior to development. Nonbinding promises by the applicant are not sufficient. *Neste Resins Corp. v. City of Eugene*, 23 Or LUBA 55 (1992).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A permit condition stating all log trucks must “depart the [subject] property as near to 4:00 a.m. as possible” is correctly interpreted to require that all log trucks must leave the subject property at 4:00 a.m., unless it is not possible to do so. Such a condition is violated where log trucks departed from the property on several occasions at 6:30 a.m. for the convenience of the applicant’s logging operation. *Marson v. Clackamas County*, 22 Or LUBA 497 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Findings that a code standard requiring that development have a minimal adverse impact on the livability of adjoining property are adequate with regard to impact on views from adjoining properties where the findings explain that a sight obscuring fence will block the only view of the development from a window of a house on the adjoining property and a condition of approval is imposed requiring construction of such a sight obscuring fence. *Goodrich v. Jackson County*, 22 Or LUBA 434 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A code provision that developers “may be required to participate financially in improving [off-site] roadways sufficient to accommodate traffic generated by the development” applies to both improvement of existing off-site roads and construction of new off-site roads, and is directly applicable to the local government’s imposition of a condition of preliminary subdivision plat approval requiring the subdivider to pay for construction of an off-site road. *J.C. Reeves Corp. v. Clackamas County*, 22 Or LUBA 360 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** When the evidentiary support for imposition of a condition of approval is challenged, what LUBA must determine is whether the evidence in the record would lead a reasonable person to conclude that there is a need for the condition to further a relevant planning purpose. *Wastewood Recyclers v. Clackamas County*, 22 Or LUBA 258 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** If the challenged decision does not explain the purpose of a condition, it is more difficult for LUBA to conclude imposition of the condition is supported by substantial evidence in the record. *Wastewood Recyclers v. Clackamas County*, 22 Or LUBA 258 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where an applicant seeks approval for development outside of a “stream corridor area,” but has already placed related development within the “stream corridor area” on the same property without obtaining necessary local permits, the local government has authority to impose conditions on approval of the applicant’s proposed development requiring that the unauthorized development be removed or that necessary local permits be obtained for the unauthorized development. *Tylka v. Clackamas County*, 22 Or LUBA 166 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a local code provides “[t]he Review Authority may impose conditions on any Type II or III development approval,” and the proposed access requires Type III development approval procedures, the local government may impose conditions on approval of the proposed access. *Cummins v. Washington County*, 22 Or LUBA 129 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** While there is no general requirement that a local government adopt findings justifying its decision to impose conditions of approval, where petitioner raises an issue below concerning whether a local government can properly impose conditions of approval, the local government must address that issue in its findings. *Cummins v. Washington County*, 22 Or LUBA 129 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where applicable plan and land use regulations allow a local government to impose conditions in granting land use approval, conditions of approval may be imposed to achieve legitimate planning purposes. *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Although detailed findings are not always required to justify conditions of land use approval, the evidentiary record must be sufficient to demonstrate a connection between the condition imposed and the planning purpose served by the condition. *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the evidentiary record demonstrates that the proposed expansion of a medical clinic is needed to provide adequate facilities for existing patients and staff and would not result in additional patients or staff, the local government improperly conditioned approval of required plan and zoning map amendments on the clinic’s agreement to relinquish a previously granted approval for parking lot egress onto an adjoining street. *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** LUBA will not conclude that a hearings officer, in reviewing a request for conditional use approval, improperly relied on prior land use violations by the applicant to refuse to consider approval with conditions, unless such refusal is clearly stated in the decision. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** 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).

**31.1.4 Permits – Approval Standards – Use of Conditions.** The requirement that conditions imposed to ensure that a proposed nonfarm use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands “be clear and objective,” does not necessarily require a local government to adopt *findings* explaining why conditions imposed for this purpose are clear and objective. *Washington Co. Farm Bureau v. Washington Co.*, 21 Or LUBA 51 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where a code requires that conditions imposed be “clear and objective,” but does not define “clear and objective,” such conditions are “clear and objective” if their application does not require the exercise of “any significant factual or legal judgment.” *Washington Co. Farm Bureau v. Washington Co.*, 21 Or LUBA 51 (1991).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Conditions of approval must have some reasonable connection with the use proposed. A condition requiring a demonstration that adequate on-site vehicular circulation will be possible has such a reasonable connection to a proposed expansion of an existing use that may make internal vehicular circulation more difficult or impossible in view of planned highway intersection improvements. *Wheeler v. Marion County*, 20 Or LUBA 379 (1990).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where the local code establishes procedures and notice requirements for hearings on administrative actions, but does not require that determinations of compliance with conditions imposed on administrative action approvals themselves be processed as administrative actions, proceedings to determine compliance with such conditions are not required to follow the hearing and notice procedures for administrative actions. *Von Lubken v. Hood River County*, 20 Or LUBA 208 (1990).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where LUBA determined in a previous appeal that a local government properly found compliance with applicable code standards and, through conditions, deferred responsibility for developing particular technical solutions to the planning commission, and LUBA’s decision was not appealed, the local government is entitled to determine compliance with the conditions of approval administratively, without notice and public hearing. *Von Lubken v. Hood River County*, 20 Or LUBA 208 (1990).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where city regulations governing applications for conditional use approval do not make all contiguous property owned by an

applicant subject to the conditional use review, and an applicant files a conditional use application for only a portion of his property, the city does not have authority to impose conditions on contiguous property owned by the applicant which is not the subject of the application. *Goodman v. City of Portland*, 19 Or LUBA 289 (1990).

**31.1.4 Permits – Approval Standards – Use of Conditions.** Where no development is presently proposed, a local government does not improperly defer required determinations of compliance with site plan review criteria by requiring, in a condition of approval, that future development must comply with such criteria. *Headley v. Jackson County*, 19 Or LUBA 109 (1990).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A city may rely on ORS 92.090(3), which states that a subdivision or partition may not be approved unless streets are “dedicated without any reservation,” to require immediate, rather than future, dedication of required rights-of-way. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government may demonstrate compliance of a proposed use with an applicable standard by (1) determining that the proposal *can* comply with the standard, if certain conditions are imposed; and (2) imposing those conditions to ensure compliance. *Eckis v. Linn County*, 19 Or LUBA 15 (1990).

**31.1.4 Permits – Approval Standards – Use of Conditions.** The requirement to comply with ordinance criteria applicable to the resolution/conceptual site plan stage of the destination resort review process cannot be avoided by deferring those determinations to the preliminary development plan stage of the review process, through restatement of the first stage approval criteria as conditions of approval for the second stage. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

**31.1.4 Permits – Approval Standards – Use of Conditions.** A local government may demonstrate compliance with an approval criterion by (1) determining that the proposal *can* comply with the criterion, if certain conditions are imposed; and (2) relying on the imposition of those conditions to ensure compliance. However, a local government may not *defer* a determination of compliance with a mandatory approval criterion based on the expectation that more detailed information may be developed in the future to demonstrate compliance with the standard. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).