31.1.5 Permits – Approval Standards – Statutory Requirement for. 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).

31.1.5 Permits – Approval Standards – Statutory Requirement for. 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).

31.1.5 Permits – Approval Standards – Statutory Requirements for. Where state statute requires that a local government provide either a public hearing before ruling on an application for a statutory permit or an opportunity for an appeal that includes a *de novo* public hearing, although the local government may require a notice of appeal that sets forth with reasonable particularity the issues that the appealing party will raise at the hearing, the local government may not, consistent with the statute, (1) make that notice requirement a jurisdictional bar to obtaining the hearing, (2) limit the issues specified to five types of issues, or (3) approve or reject requests for hearings based on a qualitative assessment of how well the appellant has explained the issues specified. *Landwatch Lane County v. Lane County*, 79 Or LUBA 96 (2019).

31.1.5 Permits – Approval Standards – Statutory Requirements for. A county may not allow unlimited, successive one-year extensions of permits for residential development on resource land where state statute and regulation provide that such permits "shall be valid for four years" and that "[a]n extension" thereof "shall be valid for two years," where nothing in the legislative history suggests an intent to allow more than one extension. *Landwatch Lane County v. Lane County*, 79 Or LUBA 96 (2019).

31.1.5 Permits – Approval Standards – Statutory Requirements for. A county decision determining vested rights involves the "discretionary approval of a proposed development of land," and is therefore a "permit" decision under ORS 215.402(4). Such decisions must be processed under procedures consistent with ORS 215.416, regardless of whether a party's request for the "permit" decision is accompanied by requests for non-"permit" decisions, whether the request is labeled or easily identifiable as an "application" for a "permit," or whether the party affirmatively requests the required procedures. *Gillette v. Lincon County*, 79 Or LUBA 549 (2019).

31.1.5 Permits – Approval Standards – Statutory Requirement for. 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).

31.1.5 Permits – Approval Standards – Statutory Requirement for. ORS 197.312(5) is not limited to only applications for a statutory permit because Senate Bill 1051 does not cross reference or otherwise cite the definition of "permit" in ORS 227.160(2), and the ORS 227.160(2) definition of "permit" limits its use "[a]s used in ORS 227.160 to 227.186." *Kamps-Hughes v. City of Eugene*, 78 Or LUBA 457 (2018).

31.1.5 Permits – Approval Standards – Statutory Requirement for. 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).

31.1.5 Permits – Approval Standards – Statutory Requirement for. Under ORS 215.416(3) and (11), when rendering a statutory land use permit decision, a county must provide a prior public hearing on the application, or provide notice and an opportunity for a de novo appeal after the statutory permit decision is rendered without a public hearing. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

31.1.5 Permits – Approval Standards – Statutory Requirement for. Where there is uncertainty about whether a local appeal is available but the local government advises a petitioner that it will provide a local appeal, that petitioner may safely exhaust that local appeal without fear of being advised later that the deadline for appealing the decision directly to LUBA expired while the petitioner exhausted the appeal that the local government provided but later determined should not have been provided. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A decision that extends a statutory permit may itself be a statutory permit if the extension decision is governed by standards that require the exercise of discretion. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A decision that extends a statutory permit may itself be a statutory permit if the extension is a request for "approval of a proposed development of land." *Bard v. Lane County*, 63 Or LUBA 1 (2011).

31.1.5 Permits – Approval Standards – Statutory Requirement for. Where a statutory permit by local law will become void if not acted on within a stated deadline, a decision to extend the permit for an additional term under discretionary criteria is itself a statutory permit. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

31.1.5 Permits – Approval Standards – Statutory Requirement for. Where local law does not require adherence to the notice and hearing or notice and local appeal procedures that apply to statutory permits, a local government does not err by adhering to those statutory notice and hearing or notice and local appeal procedures when it discovers that the decision it is being asked to adopt may qualify as a statutory permit. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A requirement that mining "not be allowed closer than one-quarter mile from any noise or dust sensitive use" is properly interpreted to impose a minimum setback, leaving the applicant to select the mining site so long as the site selected is at least one-quarter mile from any noise or dust sensitive use. Any attempt by the local government to interpret the standard to allow it unbridled discretion to enlarge the one-quarter-mile setback would likely run afoul of the ORS 215.416(8)(a) requirement that permit applications be approved or denied based on "standards." *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

31.1.5 Permits – Approval Standards – Statutory Requirement for. ORS 215.416(8)(a) simply requires that permit approval standards be included in a county's land use regulations. The ORS 215.416(8)(b) requirement that permit standards that apply to needed housing be "clear and objective" does not apply to permits for other kinds of development. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

31.1.5 Permits – Approval Standards – Statutory Requirement for. 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).

31.1.5 Permits – Approval Standards – Statutory Requirement for. 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).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A local code standard that prohibits development in wetlands does not violate the ORS 197.307(6) requirement for "clear and objective" approval standards for needed housing. Where an applicant seeks a variance to that local code prohibition against development in wetlands, ORS 197.307(6) does not prohibit application of subjective variance approval standards. *Linstromberg v. City of Veneta*, 47 Or LUBA 99 (2004).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A code criterion requiring that a proposal be shown to be compatible with the surrounding area and to not have more than a minimal impact on the livability and appropriate development of the surrounding area is not unconstitutionally vague and does not violate the ORS 227.173(1) requirement that permit

approval criteria be included in the city's land use regulations. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

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

31.1.5 Permits – Approval Standards – Statutory Requirement for. To establish a challenge under ORS 227.173(1) or ORS 215.416(8), a petitioner must demonstrate that a standard is so vague that an applicant is unable to determine whether and how approval may be granted. *McKenney v. Deschutes County*, 37 Or LUBA 685 (2000).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A 3,500-square-foot memorial garden including nine-foot-high granite walls, landscaping and walkways causes a "material change in the use or appearance of land" and is thus "development" for purposes of determining whether approval of the proposed memorial is a permit as defined at ORS 227.160(2). *Carlsen v. City of Portland*, 36 Or LUBA 614 (1999).

31.1.5 Permits – Approval Standards – Statutory Requirement for. Cities may not adopt "stand alone" sets of discretionary approval criteria and apply those criteria to approve the development of land without regard to the requirements of ORS chapter 227, merely because those criteria are not codified in the city's development ordinance. *Carlsen v. City of Portland*, 36 Or LUBA 614 (1999).

31.1.5 Permits – Approval Standards – Statutory Requirement for. City approval of a memorial garden pursuant to discretionary criteria embodied in a "siting policy" constitutes the discretionary approval of proposed development of land under city legislation or regulation and is thus a "permit" as defined at ORS 227.160(2), notwithstanding that the "siting policy" is not codified within the city's development ordinance. *Carlsen v. City of Portland*, 36 Or LUBA 614 (1999).

31.1.5 Permits – Approval Standards – Statutory Requirement for. The failure of a city to codify a particular land use regulation within its zoning ordinance does not mean that the city has failed to "set forth" that regulation in the city's "development ordinance" as required by ORS 227.173(1). For purposes of ORS 227.173(1), the scope of the city's development ordinance is not a function of how the city's land use legislation is codified. *Carlsen v. City of Portland*, 36 Or LUBA 614 (1999).

31.1.5 Permits – Approval Standards – Statutory Requirement for. 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).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A local code conditional use permit standard requiring that "the characteristics of the proposed use will have minimal adverse impact on the livability, value, or appropriate development of abutting properties and the surrounding area" is not impermissibly vague. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A zoning code requirement that certain comprehensive plan policies be complied with unless the applicant demonstrates there is "good cause" not to, is not impermissibly vague. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A code requirement that a parking structure be "consistent with the City's short term parking strategy" does not, in itself, satisfy the requirement of ORS 227.173(1) that permit standards and criteria be set forth in development ordinances, because it explains nothing about the basis on which such an application will be approved or denied. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

31.1.5 Permits – Approval Standards – Statutory Requirement for. Where consistency with the city's "short term parking strategy" is a code requirement, a city cannot determine its "short term parking strategy" is something that *underlies* various provisions of its plan and code and cannot announce that strategy for the first time in a decision on a permit application. This violates the requirement of ORS 227.173(1) that permit standards and criteria *themselves* must be set out in the city's development ordinances. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A local code provision that imposes "compatibility" as a permit approval criterion adequately informs interested parties of the basis on which an application will be approved or denied and, therefore, complies with ORS 215.416(8). *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A city code provision (1) requiring that certain "development * * * shall provide open space * * * approved by the city," (2) establishing a prioritized list of types of open space, and (3) providing an option to provide fees in lieu of open space, but failing to provide standards for determining whether to require open space or fees in lieu, violates the requirement of ORS 227.173(1) that permit decisions be governed by standards in the city's code. *Oswego Properties, Inc. v. City of Lake Oswego*, 21 Or LUBA 137 (1991).

31.1.5 Permits – Approval Standards – Statutory Requirement for. City code provisions defining open space broadly, listing "distinctive natural areas" as first priority open space and requiring that development preserve areas for open space are properly interpreted as violated by a proposal to locate a building foundation immediately next to a specimen tree designated as a "distinctive natural area." Under such provisions, a "distinctive natural area" is not limited to the tree itself, and the code provides sufficient standards to guide the city's decision making under ORS 227.173(1). *Oswego Properties, Inc. v. City of Lake Oswego*, 21 Or LUBA 137 (1991).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A city code provision (1) requiring that certain "development * * * shall provide open space * * * approved by the city," and (2) establishing a prioritized list of types of open space, concluding with "other" open space, does not violate the requirement of ORS 227.173(1) that permit decisions be governed by standards in the city's code. *Oswego Properties, Inc. v. City of Lake Oswego*, 21 Or LUBA 137 (1991).

31.1.5 Permits – Approval Standards – Statutory Requirement for. A petitioner does not waive its right under ORS 215.428(3) to have its application reviewed under the criteria in effect when the application was first submitted, where petitioner's statements in the proceedings to amend the criteria do not show petitioner was aware of such rights and petitioner did assert its rights before the planning commission and board of commissioners. *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 651 (1990).

31.1.5 Permits – Approval Standards – Statutory Requirement for. The analysis required to determine whether a local government decision concerning the development of land involves discretion, and is therefore a "permit" under ORS 215.402(4), is similar to the analysis required to determine whether the ministerial exception to the definition of land use decision stated in ORS 197.015(10)(b) applies. *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 651 (1990).

31.1.5 Permits – Approval Standards – Statutory Requirement for. Where the applicable land use regulations provide no definition of "private school," and other applicable approval standards require that buildings accessory to the school "be essential to the operation of a school," an application for a private school and accessory buildings requires the exercise of discretion and, therefore, is an application for a "permit," as that term is defined at ORS 215.402(4). *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 651 (1990).