

**31.3.20 Permits – Particular Uses – Needed Housing.** Where an applicant generally argued below that the local government could apply only clear and objective standards, and where the applicant more specifically argued that the local government could not apply certain local safety standards regulating roads and connectivity because the term “safety” is subjective and undefined in the local code, argued that the local government could not apply certain ODOT standards referenced in the local safety standards because they are undefined and not clear and objective, and opposed a proposed ODOT condition of approval as not clear and objective, LUBA will conclude that an argument that the local government erred by refusing to analyze whether the applicable criteria are “clear and objective” under ORS 197.307(4) was sufficiently raised for purposes of ORS 197.835(3), ORS 197.195(3)(c)(B), and ORS 197.763(1). *Buffalo-Bend Associates, LLC v. Clackamas County*, 81 Or LUBA 66 (2020).

**31.3.20 Permits – Particular Uses – Needed Housing.** That different decision-makers rely on different rationales and reach different conclusions about *why* a standard is met does not require a conclusion that the standard is not “clear” for purposes of ORS 197.307(4). *Arthur C. Piculell Living Trust v. City of Eugene*, 80 Or LUBA 492 (2019).

**31.3.20 Permits – Particular Uses – Needed Housing.** ORS 197.307(4) requires the standards and conditions that apply to needed housing to be both “clear” and “objective.” *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 157-58 (1998), *aff’d*, 158 Or App 1, 970 P2d 685 (1999). *Arthur C. Piculell Living Trust v. City of Eugene*, 80 Or LUBA 492 (2019).

**31.3.20 Permits – Particular Uses – Needed Housing.** Failing to address future hypothetical changes to land use regulations does not render a condition unclear for purposes of ORS 197.307(4). *Arthur C. Piculell Living Trust v. City of Eugene*, 80 Or LUBA 492 (2019).

**31.3.20 Permits – Particular Uses – Needed Housing.** That the disjunctive word “or” can be, in some circumstances, an inclusive connector and, in others, an exclusive connector, depending on its context, does not make a standard unclear for purposes of ORS 197.307(4), especially where the purpose of the standard indicates that the standard employs the word “or” as a connector in its more ordinary, exclusive, “either/or” usage. *Arthur C. Piculell Living Trust v. City of Eugene*, 80 Or LUBA 492 (2019).

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

**31.3.20 Permits – Particular Uses – Needed Housing.** Where a petitioner argues that the local government erred under ORS 197.307(4) in applying ambiguous standards to an application to

develop housing, and where an intervenor offers a traffic impact assessment (TIA) from a prior land use application that is not included in the local record to establish that the petitioner knew the local government would require compliance with the ambiguous standard, LUBA will deny a motion to take the TIA as evidence not in the record where the intervenor fails to explain how the evidence relates to any basis for LUBA to take additional evidence under OAR 661-010-0045(1) and since the facts that the TIA is offered to prove are not critical to the resolution of the appeal, as required under OAR 661-010-0045(2)(a). *Oster v. City of Silverton*, 79 Or LUBA 1058 (2019).

**31.3.20 Permits – Particular Uses – Needed Housing.** ORS 197.307(4) provides in relevant part that “a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of [ORS 197.307].” *Warren v. Washington County*, 76 Or LUBA 295 (2017).

**31.3.20 Permits – Particular Uses – Needed Housing.** Where the hearings officer did not determine whether property is “buildable land” as defined in ORS 197.295, and the Buildable Lands Inventory (BLI) adopted by Metro that identifies lands on the BLI is not in the record of the proceeding before the county and does not provide an obvious answer to the question of whether all or part of the property is on the BLI, LUBA will remand the decision for further findings on the buildable land issue. *Warren v. Washington County*, 76 Or LUBA 295 (2017).

**31.3.20 Permits – Particular Uses – Needed Housing.** Where the applicable version of the needed housing statute at ORS 197.303(1)(2001) identified “needed housing” as (1) housing on land that is included on the city’s buildable lands inventory, *and* (2) housing types listed in ORS 197.303(1)(a) through (e) (2001), which includes “government assisted housing” as defined in (1)(b), petitioner’s proposed Controlled Income Rent housing qualifies as “needed housing” because it is a “government assisted housing” project. *Wiper v. City of Eugene*, 75 Or LUBA 109 (2017).

**31.3.20 Permits – Particular Uses – Needed Housing.** A condition of approval that allows an applicant to pipe a portion of a creek required to extend sanitary sewer lines under a creek “only if it can demonstrate the necessity of doing so with a licensed engineering analysis as the only feasible means to connect wastewater service in this location” in order to locate Controlled Income Rent housing units, common areas, and infrastructure on property violates ORS 197.307(6)(2001)’s prohibition against applying special conditions that are not “clear and objective” to needed housing. *Wiper v. City of Eugene*, 75 Or LUBA 109 (2017).

**31.3.20 Permits – Particular Uses – Needed Housing.** LUBA will reject a proposed interpretation of a city code site review provision that would broadly apply to all proposed needed housing, including single-family dwellings, and result in imposition of discretionary standards and lengthy procedures that could easily have the effect of discouraging needed housing, contrary to ORS 197.307(4), where there is an alternative interpretation that harmonizes the relevant text and context and does not force the city’s code into conflict with ORS 197.307(4). *McCollough v. City of Eugene*, 74 Or LUBA 573 (2016).

**31.3.20 Permits – Particular Uses – Needed Housing** Where a city’s code offers a path for developers to qualify proposed housing as “needed housing,” in order to obtain waiver of certain

standards that would otherwise apply, LUBA will similarly interpret a related code provision requiring that site review provisions be applied when “the application proposes needed housing,” to the effect that the site review provisions apply only if the applicant seeks to qualify the proposed housing as “needed housing.” *McCollough v. City of Eugene*, 74 Or LUBA 573 (2016).

**31.3.20 Permits – Particular Uses – Needed Housing.** A code standard that requires an applicant for needed housing to demonstrate that “[t]he street layout of the proposed PUD shall disperse motor vehicle traffic onto more than one public local street \* \* \*” is not a “clear and objective standard” as required by ORS 197.307(4), because the term “disperse” could have different meanings and depending on which meaning the city chooses to apply, a proposed PUD could fail to meet the standard. Accordingly, the standard may not be applied to an application for needed housing. *Walter v. City of Eugene*, 73 Or LUBA 356 (2016).

**31.3.20 Permits – Particular Uses – Needed Housing.** Where the purpose of a standard is clear from the text of the standard, that standard is more likely to be a “clear and objective” standard within the meaning of ORS 197.307(4). *Walter v. City of Eugene*, 73 Or LUBA 356 (2016).

**31.3.20 Permits – Particular Uses – Needed Housing.** LUBA will reject a petitioner’s attempt to manufacture an interpretation of a standard that applies to needed housing under which all development would be precluded and then complain that the standard is not clear and objective and may not be applied to needed housing when the city interprets the standard in the only way it can be reasonably applied and rejects the petitioner’s interpretation. *Walter v. City of Eugene*, 73 Or LUBA 356 (2016).

**31.3.20 Permits – Particular Uses – Needed Housing.** ORS 197.307(4) requires a local government to apply only clear and objective conditions to proposed needed housing on buildable land. Conditions subject to ORS 197.307(4) include conditions imposed in earlier land use decisions that still govern development of buildable land. Accordingly, a local government may apply a condition of an earlier land use decision to needed housing on buildable land only if the condition is clear and objective. *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015).

**31.3.20 Permits – Particular Uses – Needed Housing.** A condition that prohibits the location of an assisted living facility within 135 feet of a property line is ambiguous and requires interpretation to determine whether the condition also prohibits the location of multi-family residential development within the 135-foot setback. Accordingly, the condition is not “clear and objective,” and pursuant to ORS 197.307(4) cannot be applied to deny proposed development of needed housing. *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015).

**31.3.20 Permits – Particular Uses – Needed Housing.** Under ORS 197.307(6), a local government may impose unclear, subjective or discretionary standards and conditions on needed housing only if it offers an alternative path that allows needed housing subject only to clear and objective standards and conditions. It is not consistent with ORS 197.307(6) for a local government to require an applicant for needed housing to either (1) demonstrate that needed housing is consistent with an unclear and subjective condition of a 1981 development approval, or (2) apply under discretionary standards to modify the 1981 development approval to eliminate the unclear and subjective condition. *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015).

**31.3.20 Permits – Particular Uses – Needed Housing.** A local government may not require an applicant for needed housing to seek approval under discretionary standards to modify a condition of approval that was imposed on the subject property in an earlier decision approving planned development, unless the condition was imposed on development of needed housing and the predecessor-in-interest chose the discretionary planned development path in lieu of an alternate path for needed housing subject only to clear and objective standards and conditions, consistent with the two-track framework embodied in ORS 197.307(6). *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015).

**31.3.20 Permits – Particular Uses – Needed Housing.** ORS 197.307(7) authorizes a local government to impose “special conditions” on needed housing. However, pursuant to ORS 197.307(4), any “special conditions” imposed on needed housing must be clear and objective. *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015).

**31.3.20 Permits – Particular Uses – Needed Housing.** A street design standard stating that “cul-de-sacs should not serve more than 18 dwelling units” is not a clear and objective approval standard that can be applied to approve or deny needed housing for purposes of ORS 197.307(4), where in order to apply the standard to deny proposed housing accessed by an existing cul-de-sac the local government had to interpret the street design standard to determine (1) whether it applied at all to the proposed needed housing, and (2) whether it imposes a mandatory approval standard. *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015).