

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49 (ORS 195.300 to 195.336).

Under the Court of Appeals’ decision in *Pete’s Mountain Homeowners Assn. v. Clackamas Cty.*, 227 Or App 140, 204 P3d 802, rev den 346 Or 589, 214 P3d 821 (2009), where an application for subdivision relies on Ballot Measure 37 waivers, those waivers qualify as “standards and criteria” under the ORS 215.427(3)(a) goal-post statute, and the subdivision application is not subject to subsequently enacted standards and criteria. But Ballot Measure 49, which post-dates Ballot Measure 37 and is inconsistent with the ORS 215.427(3)(a) goal-post statute overrides the goal-post statute and limits the Ballot Measure 37 subdivision applicant to one of the three remedies specified in Ballot Measure 49. *Hoffman v. Jefferson County*, 60 Or LUBA 101 (2009).

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Decisions under Measure 49 are not land use decisions and are not subject to LUBA’s jurisdiction. ORS 195.305(7); 195.318(1). *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

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Under ORS 195.305(7) local government decisions about the “nature and extent” of just compensation due under Ballot Measure 49 are not land use decisions. However, a local government decision maker’s *understanding* that approval of a preliminary plat was a decision about the “nature and extent” of just compensation under Measure 49 has no bearing on whether the decision actually is a decision about the “nature and extent” of just compensation under Measure 49. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

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A preliminary subdivision plat approval decision that post-dates a vested rights determination under Measure 49 is a land use decision subject to LUBA’s review and is not a decision concerning the “nature and extent of [just] compensation” under Measure 49. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

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In an appeal of a subdivision decision that relies on Ballot Measure 37 waivers and a Ballot Measure 49 vested rights decision, LUBA’s scope of review includes resolving questions about the scope of the previously issued Ballot Measure 37 waiver. A decision about the scope of a previously issued Ballot Measure 37 waiver is not a decision about the “nature and extent of [just] compensation” under Measure 49 (ORS 195.305(7)) and is therefore subject to LUBA review. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).