

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Code standards that allow modification of a permit condition of approval where the applicant demonstrates that an “unanticipated circumstance arising from a physical condition or off site” causes a “complication” that “prevents performance of the condition of approval” require interpretation and/or the exercise of legal judgment, and thus decisions under those standards do not fall under the ORS 197.015(11)(b) ministerial exceptions to LUBA’s jurisdiction. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A determination that no local right of appeal exists because the appealed decision did not require discretion and is not a “land use decision” requires interpretation and exercise of legal judgment, and thus does not fall within the ministerial exception to LUBA’s jurisdiction at ORS 197.015(11)(b)(B). *Hoschek v. Tillamook County*, 52 Or LUBA 793 (2006).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A planning commission decision that purports to “correct” a “clerical error” in an earlier subdivision approval by changing the 12 month expiration deadline to a 24 month deadline does not fall within the ministerial exception to LUBA’s jurisdiction at ORS 197.015(11)(b)(B), where the planning commission exercised discretion and legal judgment in implicitly determining that it had the authority to “correct” the deadline after its expiration. *Hoschek v. Tillamook County*, 52 Or LUBA 793 (2006).

26.2.6 LUBA Jurisdiction - Land Use Decision: Statutory Test - Ministerial Exception. Whether a building permit qualifies for the “clear and objective” standards exception to LUBA’s jurisdiction depends on the wording of the standards themselves, not the quality or quantity of the evidence in the record. *Jebousek v. City of Newport*, 51 Or LUBA 93 (2006).

26.2.6 LUBA Jurisdiction - Land Use Decision: Statutory Test - Ministerial Exception. Determining whether “there is reason to believe that a potential geologic hazard does exist” is a discretionary determination, and when that determination is made as part of a decision to issue a building permit, the building permit is a land use decision subject to LUBA review. *Jebousek v. City of Newport*, 51 Or LUBA 93 (2006).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Petitioners fail to demonstrate that an improvement agreement specifying how public improvements required by a preliminary plat approval will be financed and constructed is a land use decision or limited land use decision, where petitioners do not establish that the city applied land use approval criteria or exercised discretion in approving the agreement. *Bellingham v. City of King City*, 50 Or LUBA 683 (2005).

26.2.6 LUBA Jurisdiction - Land Use Decision: Statutory Test - Ministerial Exception. A comprehensive plan goal that requires that a city determine whether “there is a reason to believe that a potential [hazard] does exist” and, if so, to require “a site

specific investigation by a registered geologist or engineer * * * prior to development” is not a clear and objective standard. Where the city is required to apply that plan goal in issuing a building permit, the building permit does not qualify for the ministerial exception to LUBA’s review jurisdiction over land use decisions and limited land use decision. *Jebousek v. City of Newport*, 50 Or LUBA 724 (2005).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision under ORS 227.175(1), 227.180(1) and implementing local regulations to increase land use application and local appeal fees does not fall within the ministerial exception to LUBA’s jurisdiction, where in doing so the city necessarily makes policy choices whether to charge the maximum allowed under statute or something less, and whether to subsidize some types of applications and appeals, but not others. *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A local government ordinance that defines “driveways” in terms of “travel distance” is ambiguous and subject to different interpretations where the endpoint for measuring that travel distance is unclear. Therefore the local government exercises policy or legal judgment in making its interpretation, and a decision that interprets the ambiguous ordinance is not a ministerial decision. *Brodersen v. City of Ashland*, 49 Or LUBA 719 (2005).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where code standards for a lot line adjustment require submission of deeds, a survey drawing, proof that taxes are paid, and verification that the city has accepted any water or sewer line construction, and the petitioner fails to identify anything about those standards that requires interpretation or the exercise of policy or legal judgment, a decision approving a lot line adjustment under those standards is not a “land use decision” as defined at ORS 197.015(10). *Jewett v. City of Bend*, 48 Or LUBA 16 (2004).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision that approves a “property line adjustment” as that term is defined in ORS chapter 92 will usually fall within the ministerial exception to LUBA’s jurisdiction. However, determining whether a particular lot configuration in fact qualifies as property line adjustment, as opposed to something else such as a partition or replat, may require interpretation and exercise of legal judgment. If so, the decision does not fall within the ministerial exception, and is subject to LUBA’s jurisdiction. *South v. City of Portland*, 48 Or LUBA 555 (2005).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Absent some demonstration that recording a partition plat with the county clerk requires the application of statewide planning goals, comprehensive plan policies or implementing regulations, a county clerk’s act of recording a signed partition plat is not a land use decision or a limited land use decision. *Hammer v. Clackamas County*, 45 Or LUBA 32 (2003).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A county counsel stipulation in a mandamus proceeding zoning of property required the exercise of policy or legal judgment because the legal effect of an LCDC order on the property’s zoning was not clear. *Flying J, Inc. v. Marion County*, 47 Or LUBA 637 (2004).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A floodplain permit does not fall within the ORS 197.015(10)(b) ministerial exception to the definition of “land use decision,” where interpretation is required to determine whether comprehensive plan policies prohibiting “development” on the property prior to master plan approval apply to the floodplain permit and to determine whether the fill approved by the floodplain permit is within the scope of “development” subject to those policies. *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Land use regulations that allow “on-site” signs but prohibit “off-site” signs are not clear and objective, as applied to a proposal to construct a sign advertising a business located on a different parcel than the sign, and a building permit decision approving such a sign as a permitted use is not subject to the ORS 197.015(10)(b)(B) exception to LUBA’s jurisdiction. *Frymark v. Tillamook County*, 45 Or LUBA 486 (2003).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. LUBA has jurisdiction to review a hearings officer decision on reconsideration that determines the location of a zoning boundary, when in the course of making that decision the hearings officer is obliged to address a challenge to the hearings officer’s authority to review the matter because the underlying LUBA appeal had been dismissed and the hearings officer concludes that he does have that authority in part because the local zoning code does not prohibit such review. *6710 LLC v. City of Portland*, 43 Or LUBA 177 (2002).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the question of whether billboards are allowed in the city is not unequivocally answered by the language of the city code and requires interpretation, a city decision denying a billboard application is not subject to the ministerial exception to the statutory definition of “land use decision.” *West Coast Media v. City of Gladstone*, 43 Or LUBA 585 (2002).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. LUBA will deny a motion to dismiss based on an argument that the challenged decision is a ministerial decision, where the decision interprets and applies a local land use ordinance adopted to implement a statute and that interpretation requires the exercise of discretion. *Demlow v. City of Hillsboro*, 39 Or LUBA 307 (2001).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A city determination that one of two arguably applicable ordinances applies to a building permit requires the exercise of legal judgment, and is a land use decision subject to LUBA jurisdiction. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Even if an implicit exception for nondiscretionary limited land use decisions can be read into the definition at ORS 197.015(12), final plat approval of a planned unit development may be discretionary. Depending upon the particular circumstances of each preliminary plat approval and attendant conditions, the determination of whether final plat approval should be granted may involve the exercise of significant factual and legal judgment. *Bauer v. City of Portland*, 38 Or LUBA 715 (2000).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision to extend a previously granted conditional use permit requires the exercise of policy or legal judgment, and therefore does not qualify as a ministerial decision under ORS 197.015(10)(b)(A), where the decision determines that a code “substantial construction” requirement will be met by obtaining all required permits and that the prior permit can be revived and extended after it has become void. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A planning director’s decision stating that a proposed driving range is a permitted use and not subject to land use review is a “land use decision” subject to LUBA review because the decision is subject to standards that require the interpretation and the exercise of factual judgment to determine whether, under the ordinance, the driving range is a permitted use. *Davis v. City of Ashland*, 37 Or LUBA 224 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A planning director’s letter determining that a driving range is a permitted use is the decision that triggers the 21-day appeal timeline to LUBA, not the date the developer began construction. *Davis v. City of Ashland*, 37 Or LUBA 224 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a county makes a land use decision in which it interprets its zoning ordinance and comprehensive plan and, based on that interpretation, issues a separate decision denying a request for a building permit, the second decision does not apply a comprehensive plan or land use regulation and therefore is not a land use decision under ORS 197.015(10)(a). *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision that disposal of sewage effluent by applying it to farm land constitutes a “utility facility necessary for public service” within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision that disposal of sewage effluent by applying it to farm land constitutes a “farm use” within the meaning of ORS 215.203 requires the exercise of

policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of “land use decision” provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision that a proposal to transport treated effluent to an EFU-zoned parcel and apply that effluent to poplar trees constitutes a “farm use” within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the relationship between two decisions is not clear from the parties’ memoranda, LUBA will deny a motion to dismiss and defer a ruling on jurisdiction until after the parties’ briefs are filed and an opportunity for oral argument is provided. *Columbia Hills Development Co. v. Columbia County*, 35 Or LUBA 737 (1998).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A property line adjustment decision is a land use decision where complex factual and legal circumstances of the case require the exercise of legal judgment. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where an application for a development permit requires a site plan review, is processed according to “Type III” review procedures and involves discretionary application of policy and legal judgment, the local decision is not a ministerial decision under ORS 197.015(10)(b)(A). *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Generally, where a local government approves a street improvement project, and in a later decision awards a contract to build the improvement, the reviewable decision is the initial decision to approve the project. *Knapp v. City of Jacksonville*, 33 Or LUBA 457 (1997).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. When a comprehensive plan provides for converting two specific sections of a street into a collector street under established standards, there is no additional interpretation or policy judgment required, and the award of a construction contract for the project is not a reviewable decision under ORS 197.015(10)(b)(A). *Knapp v. City of Jacksonville*, 33 Or LUBA 457 (1997).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A grading permit, issued under clear and objective standards, is not a land use

decision even if the permit substantively violates a prior unappealed farm management plan. *Ceniga v. Clackamas County*, 33 Or LUBA 261 (1997).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A fill permit issued by the city building division is excluded from the definition of a land use decision under ORS 197.015(10)(b)(A) where it involves the application of clear and objective standards that do not require interpretation or the exercise of policy or legal judgment. *Fechtig v. City of Albany*, 31 Or LUBA 441 (1996).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. When an interpretation of the city's land use regulations and an exercise of legal judgment are required to determine which criteria apply to lot line adjustments, the city's decision does not fall under the exclusion from LUBA's jurisdiction stated in ORS 197.015(10)(b). *Thompson v. City of St. Helens*, 30 Or LUBA 339 (1996).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A major partition decision is a land use decision under ORS 197.015(10) where a county's major partition regulations provide for the exercise of policy or legal judgment, even when the county applies only minimal judgment to the application. *Sparks v. Tillamook County*, 30 Or LUBA 325 (1996).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. That a county is acting to avoid a breach of contract has no bearing on whether its decision to modify a conditional use permit is a discretionary land use decision. *Franklin v. Deschutes County*, 30 Or LUBA 33 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A hearings officer's decision to approve a zone change and planned unit development is a land use decision. Therefore, a planning department decision not to accept petitioner's local appeal of that decision is not subject to the ORS 197.015(10)(b)(A) exception to LUBA's jurisdiction for "ministerial" decisions. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. The exception to LUBA's jurisdiction in ORS 197.015(10)(b) does not apply where applicable local code standards concerning the timely filing of a local appeal require interpretation and the exercise of legal judgment. *Hick v. Marion County*, 28 Or LUBA 782 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where petitioner's claim is that a building permit violates clear and objective standards, petitioner fails to establish a basis for LUBA's jurisdiction over the appeal. *Broderson v. Jackson County*, 28 Or LUBA 645 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Petitioner's argument that a decision to approve a building permit is a land

use decision because the decision requires the application of a LCDC enforcement order fails where the enforcement order does not establish land use standards for the issuance of building permits. *Broderson v. Jackson County*, 28 Or LUBA 645 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. 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).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Determining whether the local code allows a proposed wastewater treatment facility as part of, or incidental to, the uses that it serves, or whether it requires the proposed wastewater treatment facility to be regulated as a separate use, requires interpretation and judgment. Therefore, the exception to LUBA's jurisdiction provided by ORS 197.015(10)(b)(A) does not apply. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a planning director exercises discretion in applying the local code and correctly rejecting an attempted local appeal as untimely filed, the decision to reject the attempted local appeal is a land use decision, and the proper disposition of a LUBA appeal challenging that decision is to affirm the decision rather than to dismiss the LUBA appeal. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. The limited land use decisions described by ORS 197.015(12)(b) fall somewhere between (1) outright permitted uses for which approval involves no discretionary review; and (2) uses allowed subject to application of discretionary approval standards that may require denial of the use altogether (as opposed to discretionary approval standards that only regulate the use's physical characteristics). *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A local government decision approving a building permit is a "land use decision" subject to review by LUBA if it involves the application of the goals, a comprehensive plan or a land use regulation and does not qualify as a ministerial decision under ORS 197.015(10)(b)(A) or (B). *Sullivan v. City of Ashland*, 27 Or LUBA 411 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A local government decision maker exercises both policy and legal judgment in determining whether the raising of large numbers of pigs in a confined area is a use "similar" to farm uses permitted in an EFU zone. Therefore, such a decision is a land use

decision subject to LUBA's jurisdiction. *Derry v. Douglas County*, 26 Or LUBA 25 (1993).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a local government exercised significant legal and factual judgment in determining whether a proposed dwelling will replace an "existing dwelling," the exception established by ORS 197.015(10)(b)(B) does not apply, and the challenged decision is a "land use decision" subject to LUBA's jurisdiction. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A county decision approving a dwelling on a lot or parcel that is a woodlot capable of producing 10,000 dollars or more in average gross annual income, as provided in ORS 215.213(2)(b)(B), is "discretionary" and is a "permit," as defined by ORS 215.402(4). *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a determination of whether a local appeal document meets jurisdictional requirements of the local code requires interpretation and the exercise of factual judgment, a local government decision to dismiss the local appeal is not excepted from the definition of "land use decision" under ORS 197.015(10)(b)(A). *Breivogel v. Washington County*, 23 Or LUBA 143 (1992).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision approving a building permit is a land use decision subject to LUBA's jurisdiction only if the building permit approval decision involves the application of the goals, comprehensive plan or a land use regulation and does not qualify as a ministerial decision under ORS 197.015(10)(b). *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the zoning standards under which conceptual development approval was granted are changed to disallow the use conceptually approved, and standards applicable to a second development approval require the proposed use be allowed in the zone, the uncertainty concerning which standards apply to the second application under ORS 215.428(3), makes approval of second application not subject to the exception to LUBA's jurisdiction established by ORS 197.015(10)(b)(A). *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. After 1989 amendments, ORS 197.015(10)(b)(A) and (C) parallel the interpretation of former ORS 197.015(10)(b) expressed in *Doughton v. Douglas County*, 82 Or App 444, 449, 728 P2d 887 (1986), *rev den* 303 Or 74 (1987). However, the current statutory language may *narrow* the exception for nondiscretionary decisions

expressed in *Doughton*, because it does not expressly require the exercise of *significant* judgment. *Hollywood Neigh. Assoc. v. City of Portland*, 22 Or LUBA 789 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the local code does not contain a definition of "medical clinic," the exception to LUBA's jurisdiction provided by ORS 197.015(10)(b)(C) does not apply to a decision that a proposed use is a "medical clinic," because there is no single "common knowledge" definition of "medical clinic" which can be applied without interpretation or the exercise of factual and legal judgment. *Hollywood Neigh. Assoc. v. City of Portland*, 22 Or LUBA 789 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision is "ministerial" rather than "discretionary" if it does not entail the exercise of any significant legal or factual judgment. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A city's determination that a medical waste incinerator is similar to other uses allowed in its General Industrial zone involved sufficient discretion to make it a "permit" as defined by statute. That the determination may be correct has no bearing on whether the determination is a permit. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Whether a proposed dwelling (1) is permitted outright in an EFU zone, (2) is "accessory" to an underlying nonconforming use, and (3) complies with ORS 215.296(1), are determinations which require "interpretation or the exercise of factual, policy or legal judgment" within the meaning of ORS 197.015(10)(b)(A) and (C). *Komning v. Grant County*, 20 Or LUBA 481 (1990).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Decisions that would otherwise be subject to LUBA review jurisdiction are exempt if they are "nondiscretionary or minimally discretionary applications of established criteria." *Doughton v. Douglas County*, 82 Or App 444, 728 P2d 887 (1986), *rev den* 303 Or 74 (1987). *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 651 (1990).