

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. A statutory change in the tribunal with appellate jurisdiction affects the legal rights and obligations of parties arising out of past transactions, and retrospective application of such a change in jurisdictional statutes to pending appeals is not appropriate. *Schultz v. City of Grants Pass*, 22 Or LUBA 457 (1991).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. Where LUBA lacks jurisdiction over an appeal challenging a decision approving a land division within an urban growth boundary under the jurisdictional statutes existing on the date the notice of intent to appeal is filed, LUBA does not obtain jurisdiction to consider such an appeal when legislation giving LUBA jurisdiction over appeals of such decisions becomes effective while the improperly filed appeal is pending. *Schultz v. City of Grants Pass*, 22 Or LUBA 457 (1991).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. The takings clause of the Fifth Amendment of the United States Constitution is not a "land use standard" within the meaning of former ORS 197.015(10)(b)(B), which provides that the "land use decisions" over which LUBA has review jurisdiction do not include urban land divisions that are "consistent with land use standards." *Schultz v. City of Grants Pass*, 22 Or LUBA 457 (1991).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. A local code provision requiring that partitions comply with "applicable * * * State and Federal Laws," does not make all state and federal statutes and constitutional provisions which are implicated in some way by a particular partition decision "land use standards" within the meaning of former ORS 197.015(10)(b)(B). *Schultz v. City of Grants Pass*, 22 Or LUBA 457 (1991).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. The exception to LUBA's jurisdiction provided by ORS 197.015(10)(b)(B) for urban land divisions does not apply where LUBA determines the challenged decision violates applicable land use standards. *Southwood Homeowners Assoc. v. City of Philomath*, 21 Or LUBA 260 (1991).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. Where a decision approving an urban division of land is challenged, LUBA lacks jurisdiction under ORS 197.015(10)(b)(B) only if the decision is consistent with land use standards. Therefore, before LUBA can determine whether it has jurisdiction over such an appeal, it must first determine whether the challenged decision is consistent with land use standards. *Walton v. Clackamas County*, 21 Or LUBA 69 (1991).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. Where governing land use standards are not amended or modified, the circuit court, not LUBA, has jurisdiction to determine whether an urban subdivision or partition decision violates applicable approval standards. *Sully v. City of Ashland*, 20 Or LUBA 428 (1991).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. The exception to LUBA's jurisdiction under ORS 197.015(10)(b)(B) for urban divisions of land is limited to cases which simply apply existing standards. It does not apply where plan or zone changes or variances are also granted as part of the decision. Neither does the exception apply where, in addition to granting tentative subdivision approval, the local government modifies applicable approval standards through a planned unit development approval. *Bartels v. City of Portland*, 20 Or LUBA 303 (1990).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. Because ORS 197.015(10)(b)(B) is in a subsection of the statute which creates exceptions to LUBA's jurisdiction, LUBA will assume the legislature intended ORS 197.015(10)(b)(B) to be a workable exception, and will not interpret ORS 197.015(10)(b)(B) to require that LUBA conduct a substantive review of urban partition and subdivision decisions to determine whether LUBA has jurisdiction to conduct such a review in the first place. *Southwood Homeowners Assoc. v. City of Philomath*, 20 Or LUBA 279 (1990).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. The exception to LUBA's jurisdiction created by 197.015(10)(b)(B) is confined to urban partition and subdivision decisions which merely apply, rather than modify or amend, applicable land use standards. *Southwood Homeowners Assoc. v. City of Philomath*, 20 Or LUBA 279 (1990).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. ORS 197.015(10)(b)(B) removes from LUBA's review authority any decision approving or denying a subdivision or partition within an acknowledged urban growth boundary, where the challenged decision does not also approve, or is not made in conjunction with, an amendment or modification of a comprehensive plan or land use regulation provision, regardless of whether the decision is made under objective review criteria. *Meadowbrook Development v. City of Seaside*, 20 Or LUBA 18 (1990).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. The exception to LUBA's jurisdiction established by ORS 197.015(10)(b)(B) is limited to decisions concerning subdivisions located within an *acknowledged*, urban growth boundary. *Cecil v. City of Jacksonville*, 19 Or LUBA 446 (1990).

26.2.7 LUBA Jurisdiction – Land Use Decision: Statutory Test – Urban Division Exception. County approval of a partition within an urban growth boundary, without concurrent amendment of the comprehensive plan or land use regulations, is a decision "consistent with land use standards" and, under ORS 197.015(10)(b)(B), is not a "land use decision" subject to LUBA review. *Parmenter v. Wallowa County*, 19 Or LUBA 271 (1990).