

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A county’s statement in a state agency land use compatibility certification of facts about a property’s zoning and the status of a subdivision of that property falls under the ORS 197.015(11)(b)(A) exception to the definition of land use decision because the compatibility statement did not require interpretation or the exercise of policy or legal judgment. *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007).

26.4 LUBA Jurisdiction - Land Use Decision: Exclusions. Where a county, in response to a Ballot Measure 37 claim, adopts an order that initiates a process to “modify” the existing planning and zoning of a property and later adopts an ordinance that actually changes the plan and zoning map designation for the property, the subsequent ordinance is the county decision that modifies the existing planning and zoning under ORS 197.352(8), and under ORS 197.352(9) such a decision is not a land use decision that LUBA has jurisdiction to review. *DLCD v. Klamath County*, 54 Or LUBA 113 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 92.100(7), which provides that a decision approving a final subdivision or partition plat is not a land use decision or limited land use decision, effectively removes such decisions from LUBA’s jurisdiction. Nothing in the text or legislative history of ORS 92.100(7) suggests that the exclusion applies only to nondiscretionary final subdivision or partition plat decisions. *Wagon Trail Ranch v. Klamath County*, 54 Or LUBA 654 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The fact that procedures for making limited land use decisions are used for making a decision to approve or deny a final partition plat does not convert that decision into a limited land use decision or override the language of ORS 92.100(7) providing that decisions to approve or deny a final partition plat are not limited land use decisions. *Ehle v. City of Salem*, 54 Or LUBA 688 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 92.100(7) excludes from LUBA’s jurisdiction decisions made by a local government or its designee to approve or deny a final partition plat. *Ehle v. City of Salem*, 54 Or LUBA 688 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 223.314 exempts certain plans that are adopted in support of systems development charges from the statutory definition of “land use decision.” If that exemption is applied literally and broadly, it would exempt a large number of decisions that would otherwise be subject to the statewide planning goals and would otherwise be land use decisions subject to LUBA review. *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. If a local government wants to adopt one plan to comply with ORS 223.309(1) to establish systems development charges and adopt a second plan to satisfy any obligations it may have under the statewide planning goals and local land use laws, ORS 223.309(1) and 223.314 effectively authorize such a bifurcated approach. *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A city decision to adopt a public facilities plan under ORS 223.309(1) and to proceed to adopt and implement systems development charges, before the city has separately adopted a second plan to comply with the city’s obligations under the statewide planning goals and local land use legislation, does not convert the ORS 223.309(1) public facilities plan into a *de facto* land use decision. Such an ORS 223.309(1) public facilities plan remains a fiscal plan that under ORS 223.314 is not considered a land use decision and is not reviewable by LUBA. *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. LUBA has consistently declined to apply the “fiscal exception” to decisions that involve local land use appeal fees or land use application fees, because such decisions implicate core land use concerns regarding access to and citizen participation in land use reviews. *Sommer v. Josephine County*, 52 Or LUBA 806 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The specific motivation of a county for amending its schedule of appeal and application fees is not determinative of whether the “fiscal exception” to LUBA’s jurisdiction applies. *Sommer v. Josephine County*, 52 Or LUBA 806 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The ORS 197.015(10)(e) exception to LUBA’s jurisdiction for writs of mandamus issued pursuant to ORS 215.429 or 227.179 applies only when the writ is based on an alleged violation of the statutory 120 day deadline for issuing a final decision. A writ of mandamus filed for another reason does not deprive LUBA of jurisdiction over a land use decision approving a manufactured home subdivision, even if the writ involves the same property. *D & B Home Investments v. City of Donald*, 51 Or LUBA 1 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A quasi-judicial decision approving a tentative subdivision plat does not “implement” a systems development charge within the meaning of ORS 223.314, and therefore fall within an exclusion to LUBA’s jurisdiction, simply because the decision imposes a condition of approval that imposes or references system development charges. *D & B Home Investments v. City of Donald*, 51 Or LUBA 1 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Pursuant to ORS 92.100(7) and ORS 197.015(13), LUBA has no jurisdiction over a decision approving or denying an application for final subdivision plat approval that was submitted after June 16, 2005. *Severson v. Josephine County*, 51 Or LUBA 569 (2006).

26.4 LUBA Jurisdiction - Land Use Decision: Exclusions. ORS 223.314 provides a statutory exclusion from the statutory definition of land use decision. But that exclusion only applies to the extent “a plan * * * adopted pursuant to ORS 223.309” is adopted for the limited purpose of supplying the public facility list that is required by ORS 223.309

as a precondition of adopting a systems development charge methodology. *Home Builders Assoc. v. City of Springfield*, 50 Or LUBA 109 (2005).

26.4 LUBA Jurisdiction - Land Use Decision: Exclusions. So long as sewerage facilities recommended in a regional sewerage plan cannot be built until the applicable comprehensive plan is amended to recommend those facilities, the regional sewerage plan may be adopted before the comprehensive plan is amended and the decision to adopt that regional sewerage plan to comply with state and federal environmental regulations and the requirements of ORS 223.309 for adoption of a systems development charge methodology is not a land use decision that is reviewable by LUBA. The reviewable land use decision will be adopted when the corresponding comprehensive plan amendments are adopted. *Home Builders Assoc. v. City of Springfield*, 50 Or LUBA 109 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Goal 14, factors 3 through 7 implicitly require a determination that the sites chosen to be included in an urban growth boundary (UGB) are better than other alternative sites that are also considered for inclusion and rejected. Therefore, a local code provision requiring a demonstration that “the recommended site was better than alternative sites,” does not “go further” or require more than the requirements of Goal 14, and assignments of error concerning that local code provision therefore involve “matters” that fall within the Land Conservation and Development Commission’s exclusive jurisdiction in periodic review. *City of West Linn v. Metro*, 49 Or LUBA 403 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Land use application fees, like local appeal fees, are an integral part of the zoning code provisions governing the processing and review of land use applications. A decision adopting a schedule of land use application fees pursuant to a local land use regulation is a “land use decision” subject to LUBA’s jurisdiction, because it concerns the adoption, amendment or application of a land use regulation, and is not subject to the “fiscal” exception to LUBA’s jurisdiction. *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

26.4 LUBA Jurisdiction - Land Use Decision: Exclusions. An allegation that a Metropolitan Service District ordinance that amends a regional plan and the urban growth boundary (UGB) is inconsistent with that regional plan is a Goal 2 consistency issue and therefore is a matter that is within the Land Conservation and Development Commission’s exclusive jurisdiction in a pending periodic review proceeding concerning the same ordinance. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

26.4 LUBA Jurisdiction - Land Use Decision: Exclusions. If the Metropolitan Service District’s authority to amend a regional plan to mandate certain zoning protections for industrial lands were solely a question of whether the regional plan itself prohibits such mandates, that question would likely be an issue that is exclusively within the Land Conservation and Development Commission’s exclusive jurisdiction in a pending periodic review of the amendment. However, where the question of whether the regional plan prohibits such mandates is intertwined with the question of whether other legal authorities prohibit such mandates, and LUBA has jurisdiction to consider

whether those other legal authorities prohibit such mandates, LUBA also has jurisdiction to consider whether the regional plan prohibits the mandates. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

26.4 LUBA Jurisdiction - Land Use Decision: Exclusions. There is nothing in the language of ORS 197.025(1) and 268.385(1) that imposes a higher obligation on the Metropolitan Service District in performing its coordination obligation than is imposed under the Goal 2 coordination obligation. Therefore, in performing periodic review of a regional plan amendment, the Land Conservation and Development Commission will resolve the question of whether the Metropolitan Service District properly coordinated its decision, and LUBA does not have jurisdiction to consider that issue in a LUBA appeal of the same regional plan amendment. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. 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).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Whether a decision that changes the fee to file local appeals of land use decisions is codified in the zoning ordinance is not dispositive as to LUBA’s jurisdiction under either the statutory definition or the fiscal decision exception. The essential questions are whether the challenged appeal fees (1) “concern” the application of a land use regulation and (2) are an integral part of the zoning code provisions governing the processing and review of land use applications. *Friends of Linn County*, 45 Or LUBA 408 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. When a land use decision involving appeal fees is bundled together with decisions involving other types of fees that standing alone would not fall within LUBA’s jurisdiction, the question of our jurisdiction does not turn on whether the appeal fee is quantitatively a large or small component of the decision viewed as a whole. *Friends of Linn County*, 45 Or LUBA 408 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Local appeal fees implicate core land use concerns regarding access to and citizen participation in land use reviews. Given the integral role appeal fees play with respect to land use reviews, a decision affecting appeal fees is not subject to the fiscal exception to LUBA’s jurisdiction, even where the challenged appeal fee is bundled together with a large number of other fee changes that have nothing to do with land use. *Friends of Linn County*, 45 Or LUBA 408 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where the challenged decision is adopted to fulfill a periodic review work task, and the issue before LUBA can be framed as either (1) a matter of compliance with a statute, comprehensive plan or land use regulation or (2) a matter of compliance with a statewide planning goal or administrative rule, LUBA has jurisdiction over the issue only if the statutory, plan or code obligation goes beyond or is

different from the obligation imposed by the goal or rule. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. An argument that a county comprehensive plan amendment adopted to fulfill a periodic review work task is inconsistent with a city comprehensive plan provision is an issue that is cognizable as a Goal 2 consistency issue, and thus is an issue that is within LCDC’s exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Findings challenges are necessarily derivative of the underlying criteria the findings address. Where the county code requires adoption of findings supporting legislative decisions, whether jurisdiction to review an adequate findings challenge in a legislative decision adopted to fulfill a periodic review work task lies with LUBA or LCDC depends on whether the findings address goal or rule compliance issues subject to LCDC’s exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A local code requirement for findings demonstrating that legislative decisions are “in the public interest and will be of general public benefit” does not implicate any Goal or rule requirements, and thus a challenge that the local government failed to adopt adequate findings addressing that criterion in adopting a decision to fulfill a periodic review work task is subject to LUBA’s exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

26.4 LUBA Jurisdiction - Land Use Decision: Exclusions. Under OAR 660-033-0140(5) a forest template dwelling permit is valid for four years and can be extended for two additional years. Although OAR 660-033-0140(3) provides that such an extension of a permit for a forest template dwelling “is not subject to appeal as a land use decision,” a county decision that grants a one-year extension of a forest template dwelling two years after it was issued, pursuant to general local legislation that allows permits to be extended, is a land use decision and is reviewable by LUBA. *Butori v. Clatsop County*, 45 Or LUBA 677 (2003).

26.4 LUBA Jurisdiction - Land Use Decision: Exclusions. The scope of the “fiscal exception” to statewide land use planning standards generally and LUBA’s jurisdiction in particular is not well defined, but an amendment to the fee charged to file a local appeal under a zoning ordinance does not qualify as a fiscal exception, notwithstanding that the decision adopting the fee change is not codified as part of the zoning ordinance. *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 270 (2002).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 197.825(2)(b), which states that LUBA’s jurisdiction is subject to the statutes governing the Court of Appeals’ review of LUBA decisions, simply clarifies that LUBA no longer has jurisdiction over an appeal once a party seeks judicial review of LUBA’s final order in that appeal. ORS 197.825(2)(b) does not require that LUBA consider whether the Court of Appeals

might lack constitutional authority to review LUBA's final order, or require that LUBA dismiss the appeal if it concludes that such is the case. *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 524 (2002).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. In lieu of judicial review by the Court of Appeals of an order of the Columbia River Gorge Commission regarding any action of a county pursuant to the Columbia River Gorge Scenic Area Act, the county's decision may be appealed to LUBA. Such an appeal must be filed within 21 days after the Columbia River Gorge Commission decision becomes final and LUBA may not consider any issue concerning interpretation or implementation of the Columbia River Gorge Scenic Act. *Lois Thompson Housing Project v. Multnomah County*, 37 Or LUBA 580 (2000).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. An appeal to LUBA of a county decision under the Columbia River Gorge Scenic Act, prior to the date the Columbia River Gorge Commission issues a final decision reviewing the county decision, is premature and will be dismissed. Appellate jurisdiction for review of such a county decision in the first instance lies with the Columbia River Gorge Commission. *Lois Thompson Housing Project v. Multnomah County*, 37 Or LUBA 580 (2000).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under *Murphy Citizens Advisory Com. v. Josephine County*, 325 Or 101, 934 P2d 415 (1997), a land use decision otherwise within LUBA's jurisdiction is not removed from LUBA's purview, pursuant to ORS 197.825(3), by a court order that is not a peremptory writ of mandamus. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. An indication on the notice of adoption furnished to DLCD under ORS 197.610(1) that the Statewide Planning Goals do not apply to a proposed plan or code amendment or a new land use regulation is a ministerial act without independent significance, not a land use decision subject to LUBA's jurisdiction. *Petersen v. Columbia County*, 33 Or LUBA 253 (1997).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The jurisdictional bar of ORS 197.015(10)(d) applies to both alternative and peremptory writs of mandamus, and excludes a local government decision issued in response to an alternative writ of mandamus from the definition of "land use decision." *Arnold v. Columbia County*, 32 Or LUBA 237 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a circuit court issues an order requiring the county to approve four land use applications, and that order is the culmination of a mandamus proceeding, the county's subsequent approvals of the applications are issued "in response to a writ of mandamus" for purposes of the jurisdictional bar of ORS 197.015(10)(d)(B), notwithstanding the fact that the court's order is not itself a writ of mandamus. *Estremado v. Jackson County*, 32 Or LUBA 206 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 197.825(2)(c) excludes from LUBA's jurisdiction matters addressed during periodic review by DLCDC and LCDC. *Mazeski v. Wasco County*, 31 Or LUBA 126 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The Land Use Board of Appeals has no jurisdiction over expedited land division approvals. Jurisdiction for review of expedited land divisions rests instead with the Court of Appeals. *Richey Lane Neigh. Assoc. v. Washington County*, 31 Or LUBA 102 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The Oregon Supreme Court has exclusive jurisdiction over decisions that involve the "project" component of the Westside Corridor Project. *Kane v. Tri-County Metro Trans. Dist.*, 31 Or LUBA 41 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Notwithstanding the 1991 legislature's failure to amend ORS 197.825(c), which states exclusions from LUBA's jurisdiction, to refer to the statutes where the new periodic review process is codified, LUBA reads ORS 197.825(c) as if it were so amended. *Mazeski v. Wasco County*, 30 Or LUBA 442 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under ORS 197.644 and ORS 197.825(c), issues arising during periodic review that involve compliance with the goals must be addressed and decided by LCDC, but other issues may be appealed to LUBA. *Mazeski v. Wasco County*, 30 Or LUBA 442 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under OAR 660-25-040(1) and (2), LUBA retains jurisdiction during periodic review over matters that do not involve compliance with the Statewide Planning Goals. *Mazeski v. Wasco County*, 30 Or LUBA 442 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Even if county actions could otherwise be construed to be land use decisions, where the actions are mandated by a circuit court order in response to a writ of mandamus, they are not land use decisions over which LUBA has jurisdiction. *Murphy Cit. Advisory Committee v. Josephine County*, 30 Or LUBA 28 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under OAR 661-10-010(3), a document containing findings of fact and conclusions of law that is signed by the mayor and attested by the city recorder is a final decision, but if the city has no authority to take the action reflected in the decision, the final decision is not a land use decision. Subsequent adoption with authority is a land use decision appealable to LUBA. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A zoning code fees chapter which is an integral part of the zoning code provisions governing the processing and review of land use applications is not a purely fiscal ordinance, and its application to a

local appeal of a hearings officer's decision on a land use application is not excepted from review by LUBA. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A local code chapter which allows a subdivider to recoup part of the costs of installing sewer improvements for a subdivision is purely a fiscal ordinance, and a decision applying such a fiscal ordinance is not a land use decision subject to review by LUBA. *The Petrie Company v. City of Tigard*, 28 Or LUBA 535 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Local government decisions granting design review approval for segments of a light rail transit line do not adopt or amend a city or county public facility plan and, therefore, are not excluded from being considered "land use decisions" under ORS 197.712(2)(e). *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 517.890 provides that appeals of provisional surface mining permits are governed by the provisions of "ORS 183.310 to 183.550 for appeals from orders in contested cases." Therefore, regardless of whether contested case procedures were observed in all respects during DOGAMI proceedings governed by ORS 183.480(2) and 183.482, jurisdiction to review DOGAMI's decision lies with the court of appeals, not LUBA. *Hood River Sand, Gravel & Read-Mix v. DOGAMI*, 25 Or LUBA 668 (1993).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. If a single legislative decision *both approves* plan and land use regulation amendments with regard to some Goal 5 resource sites and *denies* such amendments with regard to other sites, such a legislative decision would not qualify as a decision from which an appeal to this Board is foreclosed under ORS 197.830(2) and 197.620(1). *ODOT v. Klamath County*, 25 Or LUBA 761 (1993).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where the challenged decision is a governing body's directive to the county counsel to file a complaint in circuit court to enforce zoning regulations pursuant to ORS 197.825(3)(a), the challenged decision is not one over which LUBA has review authority. *Wygant v. Curry County*, 22 Or LUBA 110 (1991).