

26.6 LUBA Jurisdiction - Mootness. Petitioners' argument that a prior zoning ordinance did not allow a mushroom buying business is moot, where the currently applicable zoning ordinance that replaced the prior zoning ordinance does not allow a mushroom buying business and would apply to any application for a mushroom buying business in the future. *Robson v. City of La Grande*, 54 Or LUBA 10 (2007).

26.6 LUBA Jurisdiction – Mootness. Any assignments of error directed at a decision that LUBA has reversed in a consolidated appeal are moot, and hence LUBA will dismiss as moot an appeal limited to such assignments of error. *Grabhorn v. Washington County*, 50 Or LUBA 344 (2005).

26.6 LUBA Jurisdiction – Mootness. An appeal to LUBA is not moot simply because the local government mails another copy of the challenged decision to the parties, with a “corrected” attachment, during the course of the LUBA appeal, where it is clear that the local government did not intend the re-mailed decision to replace the challenged decision, and the re-mailed decision does not purport to do so. *Grabhorn v. Washington County*, 49 Or LUBA 746 (2005).

26.6 LUBA Jurisdiction – Mootness. The fact that LUBA has in a previous decision remanded plan amendments that petitioners allege prohibit a grading permit on the subject property does not moot an appeal of a grading permit for the property to LUBA, where (1) it is not clear that LUBA's remand rendered the plan amendments ineffective and (2), even if the amendments are ineffective, the unamended plan provisions include similar operative language that arguably prohibits the challenged permit decision. *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

26.6 LUBA Jurisdiction – Mootness. LUBA will dismiss as moot appeals of ordinances adopting a city's comprehensive plan and land use regulations, where those ordinances are superseded by county plan and zoning regulations encompassing the same geographic area. *McGreer v. City of Rajneeshpuram*, 46 Or LUBA 607 (2004).

26.6 LUBA Jurisdiction – Mootness. A decision that effectively withdraws or repeals an earlier decision finding that a disputed berm requires a county permit, and that reserves final judgment on that issue to a subsequent decision, moots an appeal of the earlier decision. *Grabhorn v. Washington County*, 46 Or LUBA 672 (2004).

26.6 LUBA Jurisdiction – Mootness. An appeal of a resolution that authorizes a city to acquire property is not moot where the city has acquired only a part of the property that the resolution authorizes the city to purchase. *Willamette Oaks, LLC v. City of Eugene*, 46 Or LUBA 813 (2004).

26.6 LUBA Jurisdiction – Mootness. An appeal of a county decision verifying a nonconforming use is not necessarily moot simply because the subject property is annexed into a city after the appeal to LUBA is filed. Although city annexation means that the county loses jurisdiction over the subject property, annexation does not affect the

validity of the county decision, and LUBA's review of the county decision will continue to have a practical effect on the parties. *Leach v. Lane County*, 45 Or LUBA 580 (2003).

26.6 LUBA Jurisdiction – Mootness. Plan amendment and development approvals that are contingent upon voter approval of an annexation are not necessarily mooted by failure of the annexation election, where the plan amendment and development approvals are not contingent upon a specific election, and may yet take effect if there is a successful future annexation referral. *Mason v. City of Corvallis*, 45 Or LUBA 682 (2003).

26.6 LUBA Jurisdiction – Mootness. LUBA will dismiss as moot an appeal of a permit that expired by operation of a local rule during the three year period when the parties had stipulated to suspend the appeal before LUBA. *Rest Haven Memorial Park v. City of Eugene*, 44 Or LUBA 228 (2003).

26.6 LUBA Jurisdiction – Mootness. Where the challenged permit has expired, LUBA's decision on the merits of an appeal of the permit would have no effect on the rights or obligations of the parties under the permit, and would constitute an advisory opinion. LUBA has no jurisdiction to render advisory opinions. *Rest Haven Memorial Park v. City of Eugene*, 44 Or LUBA 231 (2003).

26.6 LUBA Jurisdiction – Mootness. Findings adopted after a land use decision is appealed to LUBA cannot support that decision, and do not moot the appeal. *West Side Rural F.P.D v. City of Hood River*, 43 Or LUBA 546 (2003).

26.6 LUBA Jurisdiction – Mootness. LUBA will consider documents that are not included in the record in deciding whether an appeal is moot. *Willhoft v. City of Gold Beach*, 39 Or LUBA 743 (2000).

26.6 LUBA Jurisdiction – Mootness. Where LUBA has determined in a prior earlier appeal that a conditional use permit has expired, a subsequent appeal challenging a city decision that refuses to revoke the conditional use permit or delete certain conditions of approval in the conditional use permit is moot. *Willhoft v. City of Gold Beach*, 39 Or LUBA 353 (2001).

26.6 LUBA Jurisdiction – Mootness. Where a local government adopts modified findings in support of a land use compatibility statement and the modified findings are appealed to LUBA, an earlier appeal of the land use compatibility statement will be dismissed as moot because review of the earlier decision would have no practical effect. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

26.6 LUBA Jurisdiction – Mootness. Petitioners' appeal of a zone change approval is not rendered moot by a contemporaneous comprehensive plan amendment that redesignates the subject property from "Urban Area Reserve" to "Urban Area." Although a county cannot allow more intensive uses on property than are allowed by the plan, it may impose more restrictive zoning than would be permitted under the plan. *Alliance For Responsible Land Use v. Deschutes County*, 33 Or LUBA 12 (1997).

26.6 LUBA Jurisdiction – Mootness. Issues raised concerning a local government's interpretation of code demolition delay provisions are moot if (1) no stay of the challenged decision was requested from or granted by LUBA, the historic building in question was demolished, and petitioner does not contend it could be restored; or (2) even under petitioner's suggested interpretation of the demolition delay provisions, the demolition delay period has expired. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

26.6 LUBA Jurisdiction – Mootness. Where a code provision is challenged on the basis that it is inconsistent with the requirements of the statute it implements, but the code provision is subsequently amended so that it is consistent with the statute, the challenge to the prior code provision is moot. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

26.6 LUBA Jurisdiction – Mootness. Where the trees that are the subject of the challenged city decision authorizing removal of trees within a city right-of-way have been cut and removed, LUBA review will have no practical effect, and LUBA will dismiss the appeal as moot. *Gettman v. City of Bay City*, 28 Or LUBA 121 (1994).

26.6 LUBA Jurisdiction – Mootness. Where a local government renders a final decision approving an application for land use approval, and that decision is appealed to LUBA, the LUBA appeal is not rendered moot by withdrawal of the application for land use approval, where the local code does not make it clear that withdrawal of the application in such circumstances has any legal effect on the local government's final decision. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

26.6 LUBA Jurisdiction – Mootness. A LUBA appeal of a local government decision applying local code historic landmark and demolition delay provisions is not moot, simply because those provisions involve voluntary efforts to preserve historic resources and do not authorize the local government to prohibit demolition. *Historical Development Advocates v. City of Portland*, 27 Or LUBA 617 (1994).

26.6 LUBA Jurisdiction – Mootness. Allegations that a local code provision consolidating commonly owned parcels conflicts with ORS 92.017, which provides that a lawfully created lot or parcel shall remain a discrete lot or parcel, are rendered moot and provide no basis for reversal or remand, where the parcels in question were combined in an approved and recorded plat. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

26.6 LUBA Jurisdiction – Mootness. Where a challenged local government land use decision has been rescinded by the local government, and the decision rescinding the challenged decision has not been appealed, any decision LUBA might reach on the merits of the challenged decision would be without practical effect and LUBA will dismiss the appeal as moot. *Heiller v. Josephine County*, 25 Or LUBA 555 (1993).

26.6 LUBA Jurisdiction – Mootness. In determining whether a land use decision is moot, the question is whether a decision by LUBA on the merits would resolve merely an

abstract question and be without practical effect. *Forest Highlands Neigh. Assoc. v. City of Lake Oswego*, 24 Or LUBA 215 (1992).

26.6 LUBA Jurisdiction – Mootness. Where it is not clear from the local code that the applicant's withdrawal of a permit application after the local government makes a decision approving it has any effect on that decision, the withdrawal does not in itself make an appeal of such decision to LUBA moot. *Berg v. Linn County*, 22 Or LUBA 507 (1992).

26.6 LUBA Jurisdiction – Mootness. When LUBA's decision on the merits of an appeal will be without practical effect, LUBA will dismiss the appeal as moot. LUBA does not have authority in these circumstances to remand the challenged decision to the local government with instructions to dismiss the local proceedings as moot. *Barr v. City of Portland*, 22 Or LUBA 504 (1991).

26.6 LUBA Jurisdiction – Mootness. Where it is not clear from the local code that the applicant's withdrawal of a permit application *after* the local government makes a decision approving it has any effect on that decision, the withdrawal does not necessarily make an appeal of such decision to LUBA moot. *Gilson v. City of Portland*, 22 Or LUBA 343 (1991).

26.6 LUBA Jurisdiction – Mootness. LUBA does not have authority to take official notice of adjudicative facts, as set out in OEC 201. LUBA's review is limited by ORS 197.830(13)(a) to the record of the proceeding below, except in instances where an evidentiary hearing is authorized by ORS 197.830(13)(b), and where facts outside the record are essential to determining whether LUBA has jurisdiction or whether an appeal is moot. *Blatt v. City of Portland*, 21 Or LUBA 337 (1991).

26.6 LUBA Jurisdiction – Mootness. Where a subsequent local government decision is substantially identical to a prior decision, is based on the same findings and evidentiary record and does not purport to supersede or rescind the earlier decision, the subsequent decision does not moot an appeal to LUBA challenging the earlier decision. *Tice v. Josephine County*, 21 Or LUBA 550 (1991).

26.6 LUBA Jurisdiction – Mootness. LUBA will dismiss an appeal as moot, where review would have no practical effect. *Davis v. City of Bandon*, 19 Or LUBA 526 (1990).

26.6 LUBA Jurisdiction – Mootness. Where a moratorium challenged at LUBA expires, but the moratorium has been extended by a subsequent moratorium which is the subject of a later LUBA appeal and the subsequent moratorium is also likely to expire before a final decision can be issued in the LUBA appeal challenging that moratorium, LUBA's decision in the appeal challenging the first moratorium may influence the local government's decision to adopt additional moratoria and, therefore, may have practical effect. *Davis v. City of Bandon*, 19 Or LUBA 526 (1990).

26.6 LUBA Jurisdiction – Mootness. The exception to the judicial doctrine of mootness to provide guidance to administrative agencies in cases involving the public welfare has been significantly narrowed by the Oregon Supreme Court. If the only reason for continuing with an appeal challenging an expired moratorium was the public interest in knowing whether the expired moratorium was properly enacted, the appeal would have to be dismissed as moot. *Davis v. City of Bandon*, 19 Or LUBA 526 (1990).

26.6 LUBA Jurisdiction – Mootness. Where a local government adopts successive moratoria with effective dates which guarantee LUBA will be unable to reach the merits of a challenged moratorium before it expires, and petitioner does everything possible to bring the appeal to a conclusion before the challenged moratorium expires and is replaced by another moratorium, the exception to the judicial doctrine of mootness for cases capable of repetition yet evading review is applicable. *Davis v. City of Bandon*, 19 Or LUBA 526 (1990).

26.6 LUBA Jurisdiction – Mootness. Petitioners' appeal of a decision adopting a moratorium is not rendered moot by the expiration of the moratorium, where invalidation of the challenged moratorium may entitle petitioners to have their application for land development approval reviewed under standards in effect when the challenged moratorium was adopted, rather than under subsequently adopted land use regulations. *Davis v. City of Bandon*, 19 Or LUBA 523 (1990).