

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. LUBA will reject an argument that a party was required to file a motion to transfer earlier than 14 days after an opposing party filed a motion to dismiss for lack of jurisdiction because the opposing party had consistently questioned jurisdiction during the proceedings below. OAR 661-010-0075(b) imposes the 14-day deadline from the date that LUBA’s jurisdiction is challenged in the proceedings before LUBA. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. ORS 34.102 allows an appeal filed with LUBA to be transferred to circuit court and treated as a writ of review if the notice of intent to appeal to LUBA was filed with LUBA within the 60-day deadline for filing a writ of review, measured from the date of the challenged decision, and appears to assign to the circuit court the responsibility for determining whether the notice was filed within the 60-day deadline. Accordingly, where a motion to transfer is filed and LUBA has determined that the appealed decision is not reviewable as a land use decision, LUBA will transfer the appeal to circuit court without resolving arguments that the notice was not filed within the 60-day deadline. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. A determination that a condition of land use approval has or has not been complied with generally does not result in a land use decision, unless that determination involves the direct application of a comprehensive plan or land use regulation. *Egge v. Lane County*, 70 Or LUBA 1 (2014).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Under OAR 661-010-0075(11)(b), petitioners have 14 days from the date a party files a motion challenging LUBA’s jurisdiction over an appealed decision to file a conditional motion to transfer the appeal to circuit court, in the event LUBA sustains the jurisdictional challenge. Where petitioners do not file a conditional motion to transfer, and LUBA concludes it lacks jurisdiction, it will dismiss the appeal. *Early v. Jackson County*, 70 Or LUBA 273 (2014).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Under ORS 34.102(4), LUBA only has the authority to transfer to Circuit Court an appeal of a decision that LUBA concludes is not a land use decision or limited land use decision subject to LUBA’s jurisdiction. LUBA lacks authority to transfer to circuit court discrete “issues” raised in an appeal of a land use decision or limited land use decision, while retaining jurisdiction and review authority over the remainder of the decision. *Macfarlane v. Clackamas County*, 70 Or LUBA 497 (2014).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Under ORS 34.102(4) and OAR 661-010-0075(11)(c), LUBA will grant a contingent motion to transfer an appeal of a decision that withholds final plat approval to circuit court, notwithstanding the local government’s argument that the decision is not a quasi-judicial decision and for that reason is not reviewable by the circuit court under ORS 34.102(2). Whether the decision qualifies as a quasi-judicial decision is a question for the circuit court to answer. *Calvary Construction v. City of Glendale*, 61 Or LUBA 50 (2010).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Where LUBA concludes that the decision on appeal is not a land use decision or limited land use decision, because it is a fiscal decision, and transfers the decision to circuit court, LUBA need not also consider whether the appealed decision fails to qualify as a land use or limited land use decision for the additional reason that it is not a “final” decision. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Where LUBA concludes that the decision on appeal is not a land use decision or limited land use decision, because it is a fiscal decision, and transfer’s the decision to circuit court, LUBA need not also determine whether petitioner’s notice of intent to appeal was filed within the 21-day deadline established by OAR 661-010-0015(1). Whether the appeal was timely filed will be for the circuit court to decide, and the only relevant question regarding the timeliness of the appeal will be whether the appeal was filed within the 60 days allowed by ORS 34.030. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. LUBA lacks authority to grant a motion to transfer an appeal to circuit court once the Board has issued a final opinion and order dismissing that appeal. *Ehle v. City of Salem*, 55 Or LUBA 685 (2007).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. LUBA will grant a motion to transfer to circuit court an appeal of an ordinance that establishes a permitting process for closing mobile home parks, where the petitioner alleges but does not substantiate that the decision concerns the application of statewide planning goals, comprehensive plan provisions or land use regulations. *Century Drive Mobile Home Park, LLC v. City of Bend*, 53 Or LUBA 1 (2006).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. A motion to transfer to circuit court in the event LUBA concludes the challenged decision is not a land use decision or limited land use decision will be denied when the appeal is dismissed as untimely. *Mazorol v. City of Bend*, 52 Or LUBA 136 (2006).

27.15 LUBA Procedures/Rules - Transfers to Circuit Court. Under OAR 661-010-0075(11)(b), a precautionary motion to transfer a LUBA appeal to circuit court may be filed when a motion is filed that challenges LUBA’s jurisdiction. If such a precautionary motion to transfer is filed, and LUBA determines it does not have jurisdiction, LUBA will transfer the appeal to circuit court. But if no such precautionary motion to transfer is filed within 10 days after the motion challenging LUBA’s jurisdiction is filed, and LUBA later determines that it does not have jurisdiction, LUBA will dismiss the appeal. *Barnas v. City of Portland*, 51 Or LUBA 750 (2006).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Petitioner’s late filing of a motion to transfer is a technical violation of OAR 661-010-0075(11)(b) where it is filed approximately five months after the first motion challenging LUBA’s jurisdiction, but only 16 days after an amended motion to dismiss is filed, and the motion to transfer could

not have been ruled on before LUBA ruled on the jurisdictional challenge in any event. *ZRZ Realty Company v. City of Portland*, 49 Or LUBA 309 (2005).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. A motion to transfer to circuit court will be granted where LUBA determines it lacks jurisdiction over a final decision or determination that is contingent on future land use approvals and does not make any land use determinations or apply the goals or local land use regulations or comprehensive plan. *ZRZ Realty Company v. City of Portland*, 49 Or LUBA 309 (2005).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Because circuit court jurisdiction under the writ of review statutes does not include jurisdiction over non-final decisions or decisions rendered moot by other decisions, dismissal rather than transfer to circuit court is the appropriate disposition where LUBA concludes that the appealed decisions are either moot or are not final decisions. *Grabhorn v. Washington County*, 46 Or LUBA 672 (2004).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. LUBA may only transfer an appeal to circuit court under ORS 34.102(4) and OAR 661-010-0075(11), where the decision being appealed is not a land use or limited land use decision and therefore not subject to LUBA's exclusive jurisdiction. LUBA lacks authority to transfer discrete issues raised in an appeal, while retaining jurisdiction over other issues or aspects of the appeal. *Rookard v. Lane County*, 41 Or LUBA 14 (2001).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. A request to transfer an appeal to circuit court under OAR 661-010-0075(11) is timely when filed within 10 days of the date a party or LUBA raises an issue regarding whether LUBA has jurisdiction over the appeal. An objection that the petition for review fails to establish LUBA's jurisdiction is insufficient to state a cognizable jurisdictional challenge that would trigger the 10-day deadline in OAR 661-010-0075(11). *Garrard v. City of Newport*, 40 Or LUBA 258 (2001).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Where LUBA determines that it lacks jurisdiction to review a county decision because initial review jurisdiction over an appeal lies with the Columbia River Gorge Commission, a motion to transfer the appeal to the circuit court pursuant to OAR 661-010-0075(11) and ORS 19.230 will be denied, because no purpose would be served by transferring the appeal to circuit court. *Lois Thompson Housing Project v. Multnomah County*, 37 Or LUBA 580 (2000).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. A late filing of a motion to transfer to circuit court is a technical violation of LUBA's rules, where the filing is one day late, and the opponents do not demonstrate that the late filing prejudiced the substantial rights of one or more of the opposing parties. *Baker v. City of Woodburn*, 37 Or LUBA 563 (2000).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Where LUBA determines a challenged decision is not a land use decision or limited land use decision

and petitioner has filed a conditional motion to transfer as provided by OAR 661-010-0075(11)(c), the appeal will be transferred to circuit court. *Hashem v. City of Portland*, 34 Or LUBA 629 (1998).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Where LUBA lacks jurisdiction over the challenged decision because it is not a "land use decision," and petitioners do not file a motion pursuant to OAR 661-10-075(11), requesting that LUBA transfer the appeal to circuit court, LUBA will dismiss the appeal. *Franklin v. Deschutes County*, 29 Or LUBA 79 (1995).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. LUBA will deny a motion to suspend an appeal proceeding until a writ of review proceeding challenging a related decision can be transferred to LUBA from circuit court, if petitioner objects to the delay and there is no indication that a motion to transfer has been submitted to the circuit court. *Poddar v. City of Cannon Beach*, 26 Or LUBA 592 (1993).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Where no request to transfer an appealed decision to circuit court is filed at LUBA within 10 days after the date the respondents' briefs are due, as required by OAR 661-10-075(10)(b), LUBA will dismiss an appeal of a challenged decision over which it lacks jurisdiction. *Many Rivers Group v. City of Eugene*, 25 Or LUBA 518 (1993).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Where LUBA determines the challenged decision is not a land use decision or a limited land use decision, it will transfer the appeal to the circuit court. *Curtis Serve N Save v. City of Eugene*, 24 Or LUBA 341 (1992).

27.15 LUBA Procedures/Rules – Transfers to Circuit Court. Where LUBA determines an appealed decision is not reviewable as a land use decision, and a request to transfer the appeal to circuit court pursuant to ORS 19.230 was not filed within ten days after the respondent's brief was due, as required by OAR 661-10-075(10)(b), LUBA will dismiss the appeal. *Miller v. City of Dayton*, 22 Or LUBA 661 (1992).