

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a county approves a petitioner’s application subject to a condition of approval, where the approval requires that the condition be met prior to the expiration of the approval period, where county counsel subsequently sends the petitioner a letter concluding that the petitioner had not satisfied the condition and, thus, that the approval had expired, and where the petitioner does not assert that the letter involves the application of land use regulations or identify any land use regulation that county counsel applied or should have applied, LUBA will conclude that the letter is not a “land use decision,” as defined in ORS 197.015(10)(a)(A), and that LUBA lacks jurisdiction to review it. *Schofield v. Douglas County*, 81 Or LUBA 143 (2020).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A contract between a local government and an engineering firm for the design of three bridges does not concern the application of any land use regulation, and, thus, is not a “land use decision,” where the contract authorizes only design work and consulting services, where the contract does not authorize the use or development of land, and where the design and consulting services concern development actions that must be (and in fact were) authorized by other land use decisions. *Van Dyke v. Yamhill County*, 80 Or LUBA 403 (2019).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. When a county code compliance officer determines there is not violation of the County Land Use and Development Ordinance (LUDO) under the holding in *Thomas v. Wasco County*, 284 Or App 17, 392 P3d 741 (2017), *rev den*, 362 Or 666 (2018), it is not a “land use decision” within the meaning of ORS 197.015(10)(a) because it does not constitute the “application” of the LUDO. Accordingly, LUBA lacks jurisdiction over the appeal. *Thomas v. Wasco County*, 78 Or LUBA 312 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where the county determined that petitioner had not established a right to construct a Measure 49 dwelling on the subject property, and the county did not apply any county siting standards, the county’s decision is not a land use decision under ORS 195.318(1) and, thereby, is not subject to LUBA’s jurisdiction. *Vannett Properties, LLC v. Lane County*, 78 Or LUBA 345 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA’s jurisdiction over Metro decisions is complicated, because Metro does not have a comprehensive plan, and its ordinances are not “land use regulation[s].” As a result, a Metro decision fits within the ORS 197.015(10)(a)(A) definition of a “land use decision” only if the decision (1) adopts or amends Metro’s Regional Framework Plan; or (2) otherwise concerns the application of the statewide planning goals. *Watts v. Metro*, 78 Or LUBA 429 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. To qualify as a “land use decision” as defined at ORS 197.015(10)(a)(A)(i), a Metro Resolution must constitute a “final decision” that concerns the application of the statewide planning goals. However, finality for purposes of ORS 197.015(10)(a) is not solely a matter of whether the decision constitutes a local government’s last word on a land use issue. Other important considerations include whether the decision is an exercise of the local government’s land use planning authority, and the extent to which the decision is binding on the local government and affected parties. *Watts v. Metro*, 78 Or LUBA 429 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A decision by Metro acting as arbitrator does not constitute a “final decision,” where Metro’s role as arbitrator was not an exercise of its function as a local government at all, but rather where Metro acted as a chosen arbitrator, a function that could have been performed by a private entity or individual. *Watts v. Metro*, 78 Or LUBA 429 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A Metro arbitration decision subject to an arbitration process devised by Metro that contemplates that the final decision the comprehensive plan designation of an area of land shared by two cities and a county will be determined in the post-acknowledgement plan amendments (PAPA) adopted by the cities and county is not itself a “final” “land use decision.” *Watts v. Metro*, 78 Or LUBA 429 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A Metro arbitration decision issued pursuant to a Metro arbitration process to arrive at a solution for the comprehensive plan designation for a disputed area of land jointly owned by two cities and a county, and which contemplates that the final decision regarding the comprehensive plan designation of the area will occur during the post-acknowledgment plan amendments, is not a “zoning” decision for purposes of ORS 268.393(6), which is part of the statute implementing Ballot Measure 56. *Watts v. Metro*, 78 Or LUBA 429 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where LUBA determines that a Metro resolution is not a “final” decision, the significant impact land use decision test does not apply. The jurisdictional requirement—that a land use decision must be “final”—applies to both the statutory as well as the significant impact test. *Watts v. Metro*, 78 Or LUBA 429 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a city adopts an ordinance prohibiting marijuana businesses in the city pursuant to ORS 475B.968(1), the ordinance is not a de facto amendment of the city’s land use code provisions governing “agriculture,” and therefore is not a “land use” decision. *Caudle v. City of Dunes City*, 77 Or LUBA 230 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a city adopts an ordinance prohibiting marijuana businesses in the city pursuant to ORS 475B.968(1), the city is not required to apply its comprehensive plan provisions or adopt findings addressing those policies. ORS 475B.968 allows the city to enact a prohibition on marijuana businesses and refer that prohibition to the city’s electors for approval, and nothing within that broad grant of authority suggests the legislature intended to subject that grant of authority to review for compliance with local governments’ comprehensive plans. *Caudle v. City of Dunes City*, 77 Or LUBA 230 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A construction checklist that is signed by an official of the local fire district is not a land use decision where the checklist does not require application of any county land use regulations or comprehensive plan provisions. *Seits v. Yamhill County*, 77 Or LUBA 310 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where petitioner fails to identify any zoning or subdivision regulations that would govern the city’s decision whether or not to remove 35 trees from a city park and does not contend the park or trees in the park are inventoried as significant Goal 5 resources or identify any Goal 5 program that would apply to protect the trees at issue, petitioner fails to carry her burden to demonstrate that the challenged decision is a “land use decision” subject to LUBA’s jurisdiction. *Carlson v. City of Brookings*, 77 Or LUBA 497 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Petitioner fails to meet her burden to demonstrate that LUBA has subject matter jurisdiction over a city council’s decision to remove 35 trees from a city park, where petitioner argues the decision constitutes “logging” because it was motivated at least in part to generate revenue, and “logging” is not authorized under the Public Open Space zone that applies to the park. Simply because a city decides to offset the costs of removing hazardous trees to avoid the cost of treating and maintaining other compromised trees that are not yet hazardous does not convert the tree removal proposal into a logging operation, or otherwise make the decision a “land use decision.” *Carlson v. City of Brookings*, 77 Or LUBA 497 (2018).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a building permit is issued without applying any land use regulations, and a prior design review decision either applied or should have applied all applicable land use standards, the building permit is not a land use decision that is appealable to LUBA. *Glenwood 2006, LLC v. City of Beaverton*, 76 Or LUBA 160 (2017).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A historic review board’s final decision to suspend and terminate its review of an application for historic landmark designation that would otherwise result in a final decision by the city commission, based solely on an ORS 197.772(1) refusal to consent, is a land use decision that is reviewable by LUBA. *McLoughlin Neighborhood Assoc. v. City of Oregon City*, 76 Or LUBA 180 (2017).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A county resolution that was adopted to implement the statutory road vacation procedures in ORS 368.326 and that includes criteria for the county road official to assess “whether a vacation would be in the public interest” pursuant to ORS 368.326(1)(b), in preparing the report required under ORS 368.326(1), is not a “land use regulation” as defined in ORS 197.015(11) because it was not adopted to implement the county’s comprehensive plan or development code. *Neighbors for Smart Growth v. Washington County*, 76 Or LUBA 492 (2017).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A county decision that determines that a proposed road vacation does not “create an access configuration which violates present development standards” requires the county to consider and apply “development standards” contained in the comprehensive plan or development code that govern access, and is therefore a “land use decision” as defined in ORS 197.015(10)(a). *Neighbors for Smart Growth v. Washington County*, 76 Or LUBA 492 (2017).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A determination in an intergovernmental agreement between a city and a county that the city has no land use process established for road improvement projects that are listed in the city’s transportation system plan (TSP) or permitted with development requires the city and county to consider and apply the city’s land use regulations and the city’s TSP in order to reach that conclusion, and the intergovernmental agreement is therefore a “land use decision” within the meaning of ORS 197.015(10)(a). *MGP X Properties, LLC, LLC v. Washington County*, 74 Or LUBA 378 (2016).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A written decision that interprets various provisions of the local code is a “land use decision” as defined in ORS 197.015(10)(a), because the decision concerns the application of the local code procedures for seeking and obtaining an interpretation of the local code and the application of local code provisions that implement ORS 215.203 and ORS 215.283. Such decision is a “final” decision because no right of further local appeal exists. *Gilmour v. Linn County*, 73 Or LUBA 90 (2016).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A resolution adopted by the county board of commissioners that discontinues a planning area advisory committee and directs the county planning staff to amend the county’s comprehensive plan and land use regulations to implement the discontinuance is a “land use decision” as described in ORS 197.015(10)(a)(A), because it concerns the application of comprehensive plan and land use regulation provisions that assign a review role to the planning advisory committee. *Jensvold v. Clatsop County*, 73 Or LUBA 417 (2016).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a planning director approves an extension of a site plan review approval by relying on a provision of the code that allows extension of a zoning permit, and another provision of the code that is specific to site plan review approvals does not mention or expressly authorize extensions, a decision to extend the site plan review approval necessarily requires interpretation and the exercise of legal judgment, and therefore does not fall within the exception to LUBA’s jurisdiction at ORS 197.015(10)(b)(A). *Devin Oil Co., Inc. v. Morrow County*, 72 Or LUBA 14 (2015).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA’s scope of review under ORS 197.835(9) includes authority to determine whether the decision on review “[i]mproperly construed the applicable law[.]” Where LUBA has jurisdiction to review a land use decision, it also has jurisdiction to review challenges to that decision’s construction of “applicable law,” even if that “applicable law” is not a statewide planning goal, a comprehensive plan provision or a land use regulation. *Carlsen v. City of Portland*, 39 Or LUBA 93, 98-100, *aff’d in part, remanded in part on other grounds*, 169 Or App 1, 8 P3d 234 (2000). *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. While local laws that do not qualify as land use laws might be so unrelated to land use laws that LUBA’s scope of review to consider violations of “applicable law” would not include such laws, a city’s business licensing regulations qualify as “applicable law” under ORS 197.835(9)(a)(D), where those business licensing regulations are intertwined with the land use issues in a LUBA appeal. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. The business licensing provisions of a city’s municipal code that are not a part of the city’s zoning code are not “Land use regulation[s]” as defined in ORS 197.015(11), and therefore a city ordinance that amends the business licensing code provisions is not a “land use decision” within the meaning of ORS 197.015(10)(a), because it is not a decision that “concerns the * * * amendment * * * of * * * a land use regulation[.]” *Oregonians in Action v. City of Lincoln City*, 71 Or LUBA 234 (2015).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A letter from the city announcing that mountain biking is no longer allowed in a natural area is not a land use decision, as defined at ORS 197.015(10)(a), where the letter does not concern the application or amendment of any statewide planning goal, comprehensive plan provision, or land use regulation. *Northwest Trail Alliance v. City of Portland*, 71 Or LUBA 339 (2015).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A letter from the county’s counsel to the petitioner that merely confirms that the county has accepted, approved and recorded a final subdivision plat and that the board of commissioners cannot revoke the county’s acceptance and recording of the final plat is not a land use decision where the county counsel was not required to and did not apply a comprehensive plan provision or land use regulation in the letter. *Willamette Oaks LLC v. Lane County*, 68 Or LUBA 84 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA will not resolve a record objection and require the local government to submit a supplemental record, where the local government has filed a dispositive motion to dismiss, and none of the documents at issue in the record objection have any bearing on the jurisdictional issue. *Willamette Oaks LLC v. City of Eugene*, 68 Or LUBA 162 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Because Metro does not have a comprehensive plan or land use regulations, a Metro decision is a statutory land use decision subject to LUBA’s review only if the decision (1) adopts or amends the Metro Regional Framework Plan or one of its components, or (2) otherwise constitutes a Metro decision that concerns the application of the statewide planning goals. *Terra Hydr Inc. v. Metro*, 68 Or LUBA 302 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. The Metro Council’s adoption by resolution of a master plan for a regional park does not constitute the adoption or amendment of a functional plan, where the master plan consists entirely of non-binding recommendations and guidelines to local governments, and nothing in Metro’s legislation or elsewhere requires such a master plan to be adopted as a functional plan or amendment to a functional plan. *Terra Hydr Inc. v. Metro*, 68 Or LUBA 302 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A decision that qualifies as an “appropriate zoning classification decision” under ORS 227.160(2)(b) is subject to LUBA review “in the same manner as a limited land use decision.” ORS 227.175(11)(b). Such decisions are subject to LUBA review without regard to whether they might qualify for the general exclusion from LUBA’s jurisdiction provided by ORS 197.015(10)(b)(A) for land use decisions

that are “made under land use standards that do not require interpretation or the exercise of policy or legal judgment.” *Mariposa Townhouses v. City of Medford*, 68 Or LUBA 528 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A building permit decision that applies an ambiguous land use regulation may qualify as a land use decision and the ORS 197.015(10)(b) exclusions to the statutory definition of “land use decision” for certain ministerial decisions may not apply due to the land use regulation ambiguity. But that does not necessarily mean that the building permit also qualifies as a statutory “permit,” as ORS 227.160(2) defines that term. *Richmond Neighbors v. City of Portland*, 67 Or LUBA 115 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A building permit decision that applies an ambiguous land use regulation may qualify as a land use decision and the ORS 197.015(10)(b) exclusions to the statutory definition of “land use decision” for certain ministerial decisions may not apply due to the land use regulation ambiguity. But that does not necessarily mean that the building permit also qualifies as a statutory “permit,” as ORS 227.160(2) defines that term. *Kerns Neighbors v. City of Portland*, 67 Or LUBA 130 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. ORS 197.015(10)(a) broadly defines the term “land use decision.” Subsections (b), (c) and (d) of the statute then set out a number of exceptions for decisions that would otherwise qualify or potentially qualify as land use decisions under subsection (a). *Wetherell v. Douglas County*, 67 Or LUBA 214 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. ORS 197.015(10)(d) sets out an exception to the statutory definition of “land use decision” for “outdoor mass gatherings,” and certain other gatherings. But the ORS 197.015(10)(d) exception includes an internal exception for agri-tourism. The effect of the exception within an exception is to make decisions authorizing agri-tourism “land use decisions” that are reviewable by LUBA. *Wetherell v. Douglas County*, 67 Or LUBA 214 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. ORS 197.015(10)(d) creates an exception to the ORS 197.015(10)(a) definition of “land use decision” for “[g]athering[s] of fewer than 3,000 persons that [are] not anticipated to continue for more than 120 hours in any three-month period.” Because a decision approving one outdoor music festival limited to fewer than 3,000 persons falls with the ORS 197.015(10)(d) exception, the decision is not a land use decision subject to review by LUBA. *Wetherell v. Douglas County*, 67 Or LUBA 214 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A county’s unilateral termination of an intergovernmental agreement that never became effective might not qualify as a land use decision defined at ORS 197.015(10)(a). However, where the parties dispute and the record does not establish whether or not the agreement was effective, LUBA will not dismiss the appeal on that basis. *City of Sandy v. Clackamas County*, 67 Or LUBA 501 (2013).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Whether a contract was properly awarded under the Oregon Public Contracting Code has no bearing on the

question of whether the authorization of an amendment to a construction contract is a “land use decision” as defined in ORS 197.015(10)(a)(A). *Central Oregon Landwatch v. City of Bend*, 66 Or LUBA 101 (2012).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Under ORS 197.015(10)(b)(H)(i), adopted in 2010, “land use decision” does not include a local government decision that a proposed state agency action is compatible with the local government’s comprehensive plan and land use regulations if (1) the local government has already made a land use decision authorizing a use that encompasses the state agency action, (2) the use is allowed without review, or (3) the use requires a future land use review. As ORS 197.015(10)(b)(H)(i) is worded, LUBA’s jurisdiction over a local government compatibility determination turns on whether that determination is correct. *McPhillips Farm Inc. v. Yamhill County*, 66 Or LUBA 355 (2012).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. In order for one of the exclusions for compatibility determination at ORS 197.015(10)(b)(H) to apply, the decision must purport to fall within the exclusion or on its face fall within the exclusion. Arguments that the local government should have made its compatibility determination in a manner that would bring it within a different exclusion, based on findings the local government did not make, are not a basis to apply the different exclusion and thereby conclude that LUBA lacks jurisdiction over the compatibility determination. *McPhillips Farm Inc. v. Yamhill County*, 66 Or LUBA 355 (2012).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A 1980 reasons exception and comprehensive plan and zoning amendment to allow for a waste disposal facility “authorizes” subsequent expansions of that landfill within the rezoned area for purposes of the exclusion to LUBA’s jurisdiction at ORS 197.015(10)(b)(H)(i), where the 1980 decision specifically contemplated that the facility would expand incrementally over time, with filled disposal cells capped and reclaimed, while the active landfill operation moves on to new disposal cells. *McPhillips Farm Inc. v. Yamhill County*, 66 Or LUBA 355 (2012).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A petitioner fails to demonstrate that a decision is a “land use decision” under ORS 197.015(10)(a) where the definition of “lot of record” set out in the city’s zoning code includes five circumstances or categories under which a unit of land may be considered a “lot of record,” determining whether a unit of land is a “lot of record” under most of the five categories does not appear to require the exercise of any discretion at all, and petitioner does not argue that the unit of land falls under the one category that might require the exercise of discretion. *Jacobsen v. City of Winston*, 64 Or LUBA 164 (2011).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA lacks the equitable power of a court to apply the doctrine of laches to dismiss an appeal based on allegations that a petitioner knew from conversations with a neighbor about the challenged decision long before filing the LUBA appeal. The legislature has comprehensively prescribed in ORS 197.830(3) and other relevant statutes the deadlines to appeal land use decisions to LUBA, including what

states of knowledge are relevant in applying those deadlines. *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where one petitioner was an adjoining property owner and entitled to written notice of a permit decision under ORS 215.416, but was not provided the required notice, the deadline for filing an appeal of a decision approving the permit is within 21 days of “actual notice” of the decision, pursuant to ORS 197.830(3)(a). For other petitioners who were not entitled to notice of the decision, the deadline for filing the appeal is within 21 days of the date the petitioners “knew or should have known” of the decision, pursuant to ORS 197.830(3)(b). *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A decision that amends a land use decision is itself a land use decision. *Mingo v. Morrow County*, 63 Or LUBA 357 (2011).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A zoning information sheet that is a printout of a computer screen and shows that information from an application has been entered into the county’s automated permit application tracking system is neither a “decision” nor “final” where there is no indication that the county has taken any action on the application. LUBA lacks jurisdiction to review a zoning information sheet that is neither a decision nor final. *Hardesty v. Jackson County*, 63 Or LUBA 447 (2011).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A county decision that applies no land use laws and only authorizes construction of some walls for uses and a structure that were granted land use approval by prior land use decisions is not a land use decision. *Hardesty v. Jackson County*, 62 Or LUBA 228 (2010).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Planning department staff exercised considerable legal judgment in concluding that it could rely on a prior planning department decision, which authorized ministerial approval of certain uses, to approve a new industrial use, where that prior planning department decision was appealed and never became final. Because the planning department had to apply land use laws to approve the new industrial use and exercised considerable legal judgment in relying on its prior decision to grant that approval, the ORS 197.015(10)(b)(A) exception to the statutory definition of “land use decision” for decisions that do not require the “exercise of * * * legal judgment” does not apply. *Hardesty v. Jackson County*, 62 Or LUBA 228 (2010).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Decisions that local governments do not believe to be land use decisions and do not process as land use decisions may in fact be land use decisions. *Jacobsen v. City of Winston*, 62 Or LUBA 535 (2010).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Under ORS 92.100(7), a city decision that approves or withholds approval of a final subdivision plat is not a land use decision or limited land use decision and is not reviewable by LUBA. *Calvary Construction v. City of Glendale*, 61 Or LUBA 50 (2010).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA has jurisdiction over “land use decisions” as defined in ORS 197.015(10)(a). In reviewing land use decisions, LUBA’s scope of review extends to issues regarding a decision’s compliance with federal law. *Foland v. Jackson County*, 61 Or LUBA 264 (2010).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a board of county commissioners’ order directs the planning director to move forward with securing needed permits to remove a dam and to remove the dam, and the planning department issues a permit that is pending on appeal before the county hearings officer, the board of county commissioners’ order is not the county’s final statutory land use decision and petitioner’s LUBA appeal seeking review of the board of county commissioners’ order will be dismissed. *Schock v. Jackson County*, 61 Or LUBA 403 (2010).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A staff report that explains that an application was withdrawn by the applicant after a tentative oral decision by a decision maker but before the decision was made final is not itself a land use decision, because it does not concern the goals, comprehensive plan, or any land use regulations. *Larson v. City of Salem*, 60 Or LUBA 411 (2010).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Under ORS 197.825(1), LUBA has exclusive jurisdiction to review “land use decisions,” as that term is defined by ORS 197.015(10)(a), unless one of the exclusions set out at ORS 197.015(10)(b) applies. *Dierks v. Jackson County*, 60 Or LUBA 487 (2010).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA cannot exercise jurisdiction over a decision that is statutorily excluded from the definition of “land use decision” at ORS 197.015(10)(a), even if the decision would otherwise fall within the ambit of a “significant impact” land use decision as described in *City of Pendleton v. Kerns*, 294 Or 127, 653 P2d 992 (1982). *7th Street Station, LLC v. City of Corvallis*, 58 Or LUBA 93 (2008).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. An electrical permit that simply recognizes that the electrical panel that is the subject of the permit will be used to power a refrigeration unit, but does not authorize the refrigeration unit or take any position regarding whether the refrigeration unit is authorized under the local government’s land use regulations is not a statutory land use decision. *Hardesty v. Jackson County*, 58 Or LUBA 162 (2009).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. If an electrical permit is “for construction involving a new building, an addition or change in the use of a building,” then under OAR 918-001-0045 verification may be required to establish that the “project” is permitted under the local government’s land use regulations without “specific land use approval” or that “the project has final land use approval.” If any such verifications are actually included as part of an electrical permit decision itself, that may be sufficient to make the electrical permit a land use decision, as ORS 197.015(10)(a) defines that term. *Hardesty v. Jackson County*, 58 Or LUBA 162 (2009).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where the decision on appeal to LUBA is a hearings officer’s dismissal of a local appeal, not the building permit that was the subject of the local appeal, and the hearings officer clearly applied discretionary land use regulation standards to dismiss the local appeal, the hearings officer’s decision falls within the ORS 197.015(10) definition of “land use decision,” and LUBA has jurisdiction to review the hearings officer’s decision. *Kuhn v. Deschutes County*, 58 Or LUBA 483 (2009).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA will deny a motion to dismiss an appeal of a county decision to sell park land, where petitioners locally identified a comprehensive plan policy that could be interpreted to apply to a county decision to sell park land, and the county approves the sale of park land without responding to petitioner’s argument that sale of the park land is inconsistent with the cited comprehensive plan policy. *Kaye v. Marion County*, 58 Or LUBA 680 (2009).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where subdivision covenants, conditions and restrictions require that the city approve any changes to the covenants, conditions and restrictions and the city approves changes without applying any land use regulations, the city’s decision is not a land use decision. *Rasmussen v. City of Lake Oswego*, 56 Or LUBA 628 (2008).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A local government decision that purports to be a final decision with regard to one aspect of a land use permit application while at the same time remanding the permit application for additional decision making with regard to other aspects of the permit application is not a “final decision,” within the meaning of ORS 197.015(11)(a) and therefore is not appealable to LUBA. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. *DLCD v. City of McMinnville*, 40 Or LUBA 591 (2001), recognizes that some complex planning projects such as urban growth boundary amendments may result in adoption of more than one separately appealable land use decision. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. If two resolutions are properly viewed as separate and independent decisions, a petitioner’s failure to appeal one of those resolutions would generally be fatal to any challenges to determinations made in the unappealed resolution. However, where the two resolutions are adopted contemporaneously to approve a permit application, the two resolutions purport to resolve different legal issues but only have only minor wording differences and both resolutions are supported by the same findings document, an appeal of either resolution is sufficient to allow petitioners to challenge legal determinations in both resolutions. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Petitioners’ failure to include an adequate jurisdictional statement in their petition for review is not a basis for dismissing their appeal, where their dispute about whether the challenged decision is a land use decision is the central dispute and petitioners’ first assignment of error alleges that the appealed

decision is a land use decision that is subject to LUBA review. *Zirker v. City of Bend*, 55 Or LUBA 188 (2007).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A resolution that adopts a revised franchise agreement between the county and a landfill operator does not constitute a de facto nonconforming use determination subject to LUBA’s jurisdiction, where the resolution makes no determination whatsoever about the lawfulness or status of the landfill. *Kamp v. Washington County*, 54 Or LUBA 717 (2007).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A statement in a letter from county counsel to petitioner that purports to be a final and binding county interpretation of a local code provision by a person who has apparent authority to make such a statement is a land use decision under ORS 197.015(11). *Love v. Klamath County*, 54 Or LUBA 747 (2007).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a permit decision is not appealed before the local deadline for filing a local appeal expires, and a local governing body decision not to exercise its authority under ORS 227.180(1)(a) to review the permit decisions “on its own motion” is not governed by any statutory or local standards, the governing body’s decision is not a land use decision. Such a governing body decision is not a land use decision, notwithstanding that the local governing body considers the merits of the permit decisions before exercising its discretion not to review the permit decisions on its own motion under ORS 227.180(1)(a). *Beilke v. City of Tigard*, 53 Or LUBA 133 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A county’s certification in a state agency land use compatibility statement that the activities proposed in the related state agency permit application are consistent with all local land use requirements is necessarily a land use decision, as defined in ORS 197.015(11)(a), if it is a final decision and not subject to any of the exceptions set out at ORS 197.015(11)(b). *Wolfgram v. Douglas County*, 52 Or LUBA 536 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A determination that no local right of appeal exists for a land use compatibility statement concerns at least the application of the local government’s local appeal regulations, and thus is a land use decision under ORS 197.015(11). *Hoschek v. Tillamook County*, 52 Or LUBA 793 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a Metro Committee would be required to apply land use standards to approve a city annexation ordinance on appeal, its decision to deny the annexation ordinance is a land use decision subject to review to LUBA, notwithstanding that the denial was based on non-land use standards. *City of Damascus v. Metro*, 51 Or LUBA 210 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. When a local government enforces its own land use regulations through its own procedures, those actions may result in land use decisions that can be appealed to LUBA, and ORS 197.825(3)(a) does not divest LUBA of jurisdiction. When a local government decides to pursue enforcement of its local land use regulations in circuit court pursuant to ORS 197.825(3)(a), however, jurisdiction properly lies with the circuit court, and the determination to pursue enforcement in circuit court is not a land use decision. *Johnston v. Marion County*, 51 Or LUBA 250 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. When a local government makes a decision to enforce its regulations or not to enforce its regulations *in circuit court*, that decision of where to contest (or not contest) the land use issues is not a land use decision as defined by ORS 197.015(10). Conversely, when a local government makes a decision to enforce its regulations (or that no violation exists) *at the local level*, that decision may be a land use decision subject to our review, provided it meets the statutory definition of a land use decision. *Johnston v. Marion County*, 51 Or LUBA 250 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A local government’s rejection of a local appeal may be a land use decision even if the underlying decision sought to be appealed would not itself be a land use decision. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. When a decision is reduced to writing and prepared for the decision maker’s signature, the decision is “signed” with a signature stamp rather than an actual signature, and the local government does not contend that someone else issued the decision in the decision maker’s name, LUBA will treat the signature stamp as the equivalent of the decision maker’s signature. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a local government has adopted a generally applicable procedure under which it corrects violations of a variety of local laws by filing actions in circuit court, a local government decision that an existing use of property does not constitute a violation of its zoning ordinance that would justify filing a circuit court action under that procedure is not a land use decision. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where the zoning of property is discussed by a local appellate body during proceedings to revoke and reinstate a

building permit, but the revocation and reinstatement decisions are not governed by the zoning ordinance or other land use regulations, the mere reference to the zoning ordinance does not mean the decision “concern[ed] the * * * application of [a] land use regulation,” within the meaning of ORS 197.015(11)(a). *Barnas v. City of Portland*, 51 Or LUBA 750 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a city decision to reinstate a building permit does not apply any of the land use standards identified at ORS 197.015(11)(a)(A), and the petitioner does not argue that the city should have applied any such land use standards in addition to the Uniform Building Code provisions that the city applied to reinstate the building permit, petitioner fails to establish that the reinstatement decision is a land use decision subject to LUBA review. *Barnas v. City of Portland*, 51 Or LUBA 750 (2006).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Under 2003 statutes, LCDC and LUBA both have jurisdiction to review land use decisions that are adopted in whole or in part to comply with periodic review. LCDC reviews such decisions to ensure, among other things, that the local government’s plans and land use regulations are “achieving the statewide planning goals.” ORS 197.628(3)(d); OAR 660-025-0070(4). *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA’s scope of review over periodic review land use decisions extends to all legal issues that are properly within LUBA’s statutory scope of review, but it does not include review for compliance with statewide planning goals or other questions that are within LCDC’s scope of review in periodic review. *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where prior appeals to LUBA and the Court of Appeals concerning a property near the ocean have established that a particular comprehensive plan goal regarding environmentally hazardous areas applies at

the time a building permit is issued, a subsequent city decision to issue a building permit for the property is a land use decision. *Jebousek v. City of Newport*, 50 Or LUBA 724 (2005).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Because OAR 734-051-0155(4)(d) requires that access management plans shall be consistent with a city’s transportation system plan and because OAR 734-051-0155(4)(k) requires that the access management plan be “adopted into” the city’s transportation system plan, the city’s adoption of the access management plan “concerns the adoption, amendment or application of * * * [a] comprehensive plan provision” within the meaning of ORS 197.015(10)(a) and, for that reason, is a land use decision subject to LUBA’s jurisdiction. *Rhodes v. City of Talent*, 47 Or LUBA 574 (2004).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Under OAR 660-012-0040(4), LUBA does not have jurisdiction to review “timing and financing provisions” in a transportation financing program. However, LUBA does have jurisdiction to review a city decision that determines that a particular facility alternative is consistent with its transportation system plan, notwithstanding that such a decision may be driven in part by timing or financing considerations. *Ramsey v. City of Philomath*, 46 Or LUBA 241 (2004).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A local government decision “concerns” the application of a comprehensive plan provision or land use regulation if (1) the decision maker was required by law to apply its plan or land use regulations as approval standards, but did not, or (2) the decision maker in fact applied plan provisions or land use regulations. *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a local government has failed to amend its land use regulations to implement a land use statute, such as ORS 215.263 that governs partitions in EFU zones, a county decision that directly applies such statutes pursuant to ORS 197.646(3) is a land use decision subject to LUBA’s jurisdiction, notwithstanding that the county does not apply a statewide planning goal, comprehensive plan provision or land use regulation. *Perkins v. Umatilla County*, 45 Or LUBA 445 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A decision that initiates condemnation of property but does not approve development of the property is not a land use decision subject to LUBA review. *Decker v. City of Cornelius*, 45 Or LUBA 539 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A resolution that initiates condemnation of property is not a statutory land use decision, where petitioner identifies no statewide planning goal, comprehensive plan or land use regulation provision that must be applied in adopting such a resolution. *Decker v. City of Cornelius*, 45 Or LUBA 539 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. It is not clear whether the ORS 197.015(10)(d) exemption of decisions authorizing certain small, infrequent gatherings from the statutory definition of “land use decision” precludes local governments from applying their land use regulations to decisions concerning such gatherings. *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Assuming that ORS 197.015(10)(d) prohibits local governments from applying its land use regulations to “gatherings of fewer than 3,000 persons that [are] not anticipated to continue for more than 120 hours in any three-month period,” the “in any three month period” language limits the statutory prohibition to properties where such gatherings occur no more frequently than once every three months. *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Local government decisions authorizing outdoor mass gatherings as defined at ORS 433.735(1) that will last fewer than 120 hours are not subject to local land use regulations and are not land use decisions subject to LUBA review. *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Local government decisions authorizing the large outdoor gatherings defined at ORS 433.763(1) that will last more than 120 hours are subject to local land use regulations and are land use decisions subject to LUBA review. *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A business that schedules up to 15 social gatherings at an airport is not exempt from county land use regulations under ORS 197.015(10)(d) because even if ORS 197.015(10)(d) prohibits regulation of the small gatherings described in the statute, the prohibition only applies if there is no more than one gathering every three months. *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Even if ORS 197.015(10)(d) does prohibit county regulation of gatherings of fewer than 3,000 persons on a site, it would only do so if those gatherings occurred no more frequently than once every three months on the site. *Cookman v. Marion County*, 44 Or LUBA 630 (2003).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A decision that changes the appeal fee charged to file a local appeal under a county zoning ordinance “concerns

the application of” the zoning ordinance and, for that reason, qualifies as a land use decision under ORS 197.015(10)(a)(A)(iii). *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 270 (2002).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. The combined effect of ORS 197.175(1) and OAR 660-001-0300 and 660-001-0310 is to make all city annexation decisions land use decisions. Either (1) the city’s comprehensive plan or land use regulations have criteria that govern the annexation, in which case the annexation decision is a land use decision under ORS 197.015(10)(a)(A)(ii) or (iii), or (2) the comprehensive plan and land use regulations do not have criteria that govern annexation decisions, in which case under ORS 197.175(1) and OAR 660-001-0310 the statewide planning goals continue to apply directly and make the annexation decision a land use decision under ORS 197.015(10)(a)(A)(i). *Cape v. City of Beaverton*, 43 Or LUBA 301 (2002).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A city’s approval of a reimbursement district is a “fiscal ordinance” and therefore not subject to LUBA’s jurisdiction, regardless of whether the city applied or should have applied its land use regulations in rendering the decision. *Jesinghaus v. City of Grants Pass*, 42 Or LUBA 477 (2002).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. The fact that a city’s approval of a reimbursement district is related to a condition of approval imposed in a previous land use decision does not make the approval of the reimbursement district itself a land use decision subject to LUBA’s jurisdiction, absent a showing that the city applied or interpreted the goals, a plan provision or a land use regulation in approving the reimbursement district. *Jesinghaus v. City of Grants Pass*, 42 Or LUBA 477 (2002).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A city decision establishing a local improvement district to fund street improvements that does not involve the application of comprehensive plan policies or land use regulations or result in a “significant impact” on land use is not a land use decision. *Hazelnut A Partners v. City of Woodburn*, 42 Or LUBA 474 (2002).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Two letters from county counsel explaining the county’s position that a code deadline to commence subdivision construction applies to a subdivision approval with litigation pending, and stating that the applicants may file an application for extension of the subdivision approval under a particular code provision, do not constitute land use decisions. *Bartell v. Washington County*, 42 Or LUBA 464 (2002).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where applicants unsuccessfully seek a writ of mandamus to compel a county to grant their request for a county extension of time to commence construction of a subdivision, or a county ruling that the deadline was tolled while litigation concerning the subdivision was pending, and the county never responds to the applicants’ request in writing, LUBA does not have jurisdiction to review the county’s decision until it renders a written decision in response to the applicants’ request. *Bartell v. Washington County*, 42 Or LUBA 464 (2002).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A decision that interprets and applies zoning ordinance provisions regarding uses that are listed as conditional uses in an exclusive farm use zone and includes determinations regarding allowed uses on a property does not fall into the exception to the definition of “land use decision” found in ORS 197.015(10)(b)(B), and is a land use decision reviewable by LUBA. *Hiebenthal v. Polk County*, 41 Or LUBA 316 (2002).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a city has not responded to petitioner’s concerns that a property owner lost his right to continue a nonconforming residential use, petitioner may be able to seek a remedy in circuit court under ORS 197.825(3)(a). However, unless and until the city addresses those concerns in a land use decision, LUBA has no jurisdiction to consider those concerns. *Robson v. City of La Grande*, 40 Or LUBA 250 (2001).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. The failure of a petition for review to include the jurisdictional statement required by OAR 661-010-0030(4)(c) provides no basis for dismissal where it is clear that the challenged decision is a land use decision, as defined by ORS 197.015(10), because the decision concerns the adoption of comprehensive plan map and zoning map amendments and applies discretionary comprehensive plan amendment criteria and at least one statewide planning goal. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. LUBA may consider evidence outside of the local record for the limited purpose of determining whether it has jurisdiction without the necessity of granting motions to take evidence outside of the record. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where petitioner does not establish that the city either applied or was required to apply land use standards when it made a final decision to condemn petitioner’s EFU-zoned property for a utility facility, in advance of seeking county land use approval for that facility, the challenged decision is not a land use decision over which LUBA has jurisdiction. *E & R Farm Partnership v. City of Gervais*, 39 Or LUBA 251 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A city has authority under ORS 92.040 and 92.180 to review and approve subdivision plats. Where a city requires an application for a subdivision replat to show revised easements and applies its land use regulations to approve the replat, the city’s decision is a land use decision or limited land use decision subject to LUBA’s review. *Haber v. City of Gates*, 39 Or LUBA 137 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. In reviewing land use decisions, LUBA’s scope of review is not limited to arguments regarding the local government’s application of land use regulations or other land use standards; LUBA may also consider arguments that the decision violates applicable non-land use standards. *Carlsen v. City of Portland*, 39 Or LUBA 93 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A letter from a city parks commissioner stating that the city planning department had concluded a conditional use permit is not required for a proposed soccer practice field is not a “land use decision” pursuant to ORS 197.015(10)(a)(A) because it does not purport to apply a land use regulation. However, the letter from the planning department concluding that the proposed use does not require a permit is a final “land use decision” because it does apply a land use regulation and no further local appeal process was available. *Kent v. City of Portland*, 38 Or LUBA 942 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A county’s decision finding that a letter from another local government constitutes a memorandum of understanding required under the county’s comprehensive plan applies a comprehensive plan provision and is thus a land use decision. *Cedar Mill Creek Corr. Comm. v. Washington County*, 38 Or LUBA 333 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a county’s decision regarding compliance with a comprehensive plan provision is made in conjunction with a determination that a condition of approval of a previously granted permit is satisfied, the ancillary decision regarding the condition of approval is subject to LUBA review. *Cedar Mill Creek Corr. Comm. v. Washington County*, 38 Or LUBA 333 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A decision that, by itself, is not a land use decision may nevertheless be reviewable when presented to LUBA as part of a decision that applies comprehensive plan policies or land use regulations. *Cedar Mill Creek Corr. Comm. v. Washington County*, 38 Or LUBA 333 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a petitioner fails to respond to an apparently meritorious motion to dismiss, petitioner fails to carry his burden to demonstrate that the challenged decision is a land use decision subject to review by LUBA. *Rohrer v. Crook County*, 38 Or LUBA 8 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a county enforcement decision does not apply or interpret any land use regulations in deciding that a mobile home set-up permit is the equivalent of a building permit for the purpose of determining whether a permit deadline has been met, the county’s decision is not a land use decision subject to LUBA’s jurisdiction. *Balk v. Multnomah County*, 38 Or LUBA 1 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. An otherwise clear and objective building permit, as that concept is used in ORS 197.015(10)(b)(B), remains clear and objective even if, as applied in a particular circumstance, it undermines the purpose or policy that it implements. *Tirumali v. City of Portland*, 37 Or LUBA 859 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A calculation mistake made during the course of applying a clear and objective building permit standard does not render a decision applying that standard a land use decision. *Tirumali v. City of Portland*, 37 Or LUBA 859 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A planning director’s letter to a third party explaining the basis for approving a building permit is not a land use decision, where the standards used in approving the building permit are clear and objective. *Tirumali v. City of Portland*, 37 Or LUBA 859 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A condition of approval included in a temporary surfacing permit requiring information and reports about trees proposed for removal under city code sections regulating tree removal does not make the temporary surfacing permit a land use decision, even if the cited code sections are land use regulations, where the condition makes it clear that the temporary surfacing permit does not authorize removal of trees. *Lindsey v. City of Eugene*, 37 Or LUBA 695 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Petitioners have the burden to establish LUBA jurisdiction and, where petitioners do not argue that the challenged decision applied or should have applied any land use standards, LUBA will dismiss the appeal. *Lindsey v. City of Eugene*, 37 Or LUBA 695 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Under ORS 197.825(3)(a), a local government may elect to enforce its land use regulations, and if such an enforcement action is filed in circuit court, the court has jurisdiction to consider any land use issues that might arise. *Yost v. Deschutes County*, 37 Or LUBA 653 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A local government decision not to institute action in circuit court to enforce its land use regulations is not itself a land use decision, provided the local government’s decision is not rendered pursuant to a local procedure that necessarily leads to a land use decision, as defined by ORS 197.015(10)(a). *Yost v. Deschutes County*, 37 Or LUBA 653 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a local government’s land use regulations make it clear that staff determinations describing the uses to which property may be put are informal decisions rather than final county decisions, and those decisions are rendered outside formal local government land use procedures for decision making and declaratory rulings, such decisions do not constitute land use decisions that may be appealed to LUBA. *Yost v. Deschutes County*, 37 Or LUBA 653 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A city’s ordinance that adopts a process to establish revenue reimbursement districts and a resolution that then applies that process to a particular area are not “land use decisions” as defined in ORS 197.015(10)(a)(A). *Baker v. City of Woodburn*, 37 Or LUBA 563 (2000).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A resolution of nonbinding support for the siting of a tribal casino within city limits is not a statutory land use decision because it does not apply comprehensive plan or land use regulations. *Kelley v. City of Cascade Locks*, 37 Or LUBA 80 (1999).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Under LUBA’s rules a land use decision must be a written decision. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A city’s concurrence in a county’s vacation of a right-of-way within city limits pursuant to ORS 368.361(3) is not a final, appealable land use decision. *Oregon Shores Cons. Coalition v. Lincoln County*, 36 Or LUBA 288 (1999).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A decision approving a subdivision pursuant to county comprehensive plan and land use regulations is a land use decision under ORS 197.015(10)(a). That a subdivision approval decision is conditioned on construction of road access for the subdivision does not convert that decision or any part of the decision into the type of transportation facility decision that is excluded from the statutory definition of “land use decision” by ORS 197.015(10)(b)(D). *Warrick v. Josephine County*, 36 Or LUBA 81 (1999).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A city decision that a use must comply with applicable building code requirements even if it is properly viewed as a home occupation under the city’s land use regulations is not a statutory land use decision subject to LUBA review, because it does not apply a comprehensive plan or land use regulation provision. *Brodka v. City of Eugene*, 35 Or LUBA 695 (1999).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a local government is required to apply required land use provisions but fails to do so, that failure does not exclude the decision from the definition of “land use decision” under ORS 197.015(10)(a). *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. When a local governing body determines that a condition imposed in connection with an earlier land use decision either has or has not been complied with, but does not base its determination on the interpretation and application of land use regulations, the determination is not a land use decision over which LUBA has jurisdiction. *Mar-Dene Corp. v. City of Woodburn*, 33 Or LUBA 245 (1997).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A school district’s decision to adjust attendance area boundaries is not a statutory land use decision. *Butts v. Hillsboro School District*, 33 Or LUBA 211 (1997).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where the city explains in its decision to grant a development permit that a conditional use review is not required, a letter from the city planning director written five months later stating that the review is not required is not itself an appealable land use decision, and an appeal five months from the initial decision is not timely. *Northwest Environmental Adv. v. City of Portland*, 33 Or LUBA 45.

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A letter from county counsel refusing to revoke a previously granted building permit is not an appealable land use decision. *Ceniga v. Clackamas County*, 32 Or LUBA 273 (1997).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. The issuance or denial of a building permit can be a land use decision if it involves the application of the Statewide Planning Goals, a comprehensive plan, a zoning ordinance or other ordinance implementing a comprehensive plan. *Friends of Eugene v. City of Eugene*, 32 Or LUBA 161 (1996).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. When a county has made detailed findings explaining why a challenged decision is not a land use decision under its local regulations or, alternatively, why the decision is exempt from review under those regulations, and those findings are not clearly wrong, LUBA will defer to the county's interpretation of its own regulations. *Leathers v. Washington County*, 31 Or LUBA 43 (1996).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A local government's reiteration of a previous land use decision in a notice letter does not create a new appealable decision, and the inclusion of a statement of appeal rights in the notice letter does not convert that notice into a separate land use decision. *Lloyd Dist. Community Assoc. v. City of Portland*, 30 Or LUBA 390 (1996).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Even if a local decision maker had no authority to make a land use decision, LUBA has jurisdiction over an appeal of that decision if it falls within the class of decisions over which LUBA has review authority. *Caraher v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. In modifying a condition to the earlier approval of a conditional use permit, a county planning director exercised policy judgment in the application of land use regulations, thereby making a statutory land use decision. *Franklin v. Deschutes County*, 30 Or LUBA 33 (1995).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where an improvement agreement signed by a county is limited to implementing a conditional use permit previously approved by the county, and does not modify that conditional use permit, the improvement agreement does not require application of land use standards and does not constitute a "land use decision," as that term is defined by ORS 197.015(10). *Franklin v. Deschutes County*, 29 Or LUBA 79 (1995).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a decision to eliminate conditions of approval requires local review under code zone change standards, the

decision is a land use decision, and not a limited land use decision. *Lamm v. City of Portland*, 28 Or LUBA 468 (1995).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. In the absence of an interpretation of the applicability of zone code regulations to the challenged decision, LUBA cannot determine whether a city council decision approving a road improvement is a statutory land use decision. *Carlson v. City of Dunes City*, 28 Or LUBA 411 (1994).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A local government order that simply corrects clerical mistakes in an earlier local government order making a land use decision is not itself an appealable land use decision. *Kalmiopsis Audubon Society v. Curry County*, 27 Or LUBA 640 (1994).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Allegations in a notice of intent to appeal that the challenged decision is a land use decision do not constitute a judicial admission that the challenged decision is a land use decision. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where no land use standards govern a local government decision to allow the applicant to abandon a permit application that led to a permit decision remanded by LUBA and instead to submit a new application governed by amended approval standards, the decision does not, by itself, constitute a land use decision or limited land use decision. *Fechtig v. City of Albany*, 27 Or LUBA 666 (1994).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. A planning department letter stating the local government considers itself bound by a stipulation entered in a prior circuit court proceeding is not a land use decision, separate and apart from the prior stipulation. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where a local government refers to its land use regulations, finds facts and makes a decision that its land use regulations do not apply, its decision is a land use decision. The nature of the legal theory supporting its conclusion that its land use regulations do not apply does not affect whether the decision is properly viewed as a land use decision. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Under the statutory definition of “land use decision,” circuit courts do not make land use decisions; local

governments, special districts and state agencies do. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. That a stipulation concerning the applicability of a local government’s land use regulations to certain property is entered into by the local government and a property owner outside the confines of a land use proceeding and without following the procedures required for land use decision making does not make the decision any less a land use decision. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Where the challenged decision simply applies the city’s fire code, and petitioner does not argue that the fire code is (1) a land use regulation, (2) a comprehensive plan provision, or (3) a goal provision, the challenged decision is not a statutory land use decision subject to LUBA’s jurisdiction. *Curtis Serve N Save v. City of Eugene*, 24 Or LUBA 341 (1992).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. 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).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Findings addressing land use standards may or may not be required to support a legislative land use decision. However, the absence of such findings has no bearing on whether a decision actually is a land use decision. *Jentzsch v. City of Sherwood*, 20 Or LUBA 575 (1991).

26.2.1 LUBA Jurisdiction – Land Use Decision: Statutory Test – Generally. Final decisions which apply the local government’s land use regulations are land use decisions subject to review by LUBA unless one or more of the limitations provided in ORS 197.015(10)(b) and 197.825(2) and (3) apply. *Putnam v. Klamath County*, 19 Or LUBA 616 (1990).