

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A notice of intent to appeal filed after a county decision is reduced to writing and signed, but before the decision is physically mailed, is not premature where the applicable local ordinance requires that notice of the final action be “given” rather than mailed, and the county provided emailed notice of the signed decision sufficient to satisfy the ordinance, rendering the decision final for purposes of ORS 197.830(9). *Scott v. Josephine County*, LUBA No 2021-079 (Dec 6, 2021).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A letter from the director of the Oregon Department of Aviation to petitioners’ counsel, stating that, “[o]n October 27, 2011, the [Oregon Aviation Board] approved the [Aurora Airport] Master Plan for submittal to the Federal Aviation Administration” is not a “final decision or determination of a state agency” or a decision “with respect to which the agency [was] required to apply the goals” for purposes of ORS 197.015(10)(a)(B) where, regardless of whether the letter itself is incorrect in stating, as a fact, that the Board adopted the Master Plan in 2011, the letter merely conveys facts about events that have already occurred. *Friends of French Prairie v. ODA*, 80 Or LUBA 524 (2019).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where the last paragraph of a legal lot verification decision states that it is a “preliminary” decision and that the “decision” on whether the property is a legal lot will be made when a development permit is approved, the legal lot verification decision is not a final, binding decision that determines that the property is a lawfully created lot. *Wolcott v. Lane County*, 77 Or LUBA 165 (2018).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. ORS 197.830(6) is a statute of ultimate repose, providing that appeal periods to LUBA may not exceed either a three-year or 10-year period, depending on whether notice of the final decision is required but not provided. However, ORS 197.830(6) cannot be applied to require a county in 2016 to recognize property as a lawfully created parcel pursuant to a 2003 legal lot verification decision, on the theory that the 2003 decision was a “final,” unappealed, and now unappealable decision under ORS 197.830(6), where the 2003 decision itself states that it was only a “preliminary” decision. Because only final decisions can be appealed to LUBA, the statute of ultimate repose is inapplicable. *Wolcott v. Lane County*, 77 Or LUBA 165 (2018).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A construction checklist that is signed by an official of the local fire district with the word “temp[orary]” is not a final decision within the meaning of ORS 197.015(10)(a)(A), and is therefore not a “land use decision.” *Seits v. Yamhill County*, 77 Or LUBA 310 (2018).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. The minutes of a historic review board’s meeting at which it suspended action on an application for historic landmark designation, or a letter by a planner describing the historic review board’s decision to suspend action, can be sufficient to constitute a writing, to the extent a writing is a jurisdictional

requirement for a final land use decision. *McLoughlin Neighborhood Assoc. v. City of Oregon City*, 76 Or LUBA 180 (2017).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a county’s code enforcement procedure requires a code enforcement officer to make a preliminary decision regarding whether there is probable cause to believe there is an ordinance violation, that decision is not a final decision that may be appealed to LUBA. Under the county’s code enforcement procedure, if the code enforcement officer finds there is probable cause, the first step is to seek voluntary compliance and the next step would be for the county to seek declaratory or injunctive relief in circuit court, where the code enforcement officer would have the burden of proof regarding the ordinance violation. If the code enforcement officer finds there is no probable cause, that is not a final decision either, as a petitioner may continue to request that the county take enforcement action, or petitioner may seek declaratory or injunctive relief in circuit court under ORS 197.825(3), where petitioner would have the burden of proof regarding the ordinance violation. *Robson v. Polk County*, 75 Or LUBA 343 (2017).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A county board of commissioners’ order authorizing the planning director to enter into a stipulation with a land use applicant is an initiatory or interlocutory step toward a final decision, the stipulation, not a final decision in itself. *Rogue Advocates v. Jackson County*, 74 Or LUBA 38 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. LUBA will dismiss an appeal of a hearings officer’s decision approving a post-acknowledgment plan amendment (PAPA) because the decision is not a final decision, notwithstanding that the county code states that the hearings officer’s decision on a PAPA is the county’s final decision, and the county board of commissioners merely ratifies the hearings officer’s decision, where it is reasonably clear that the county commissioners’ ratification decision is the county’s final decision on the application for purposes of appeal to LUBA. *Setniker v. Polk County*, 74 Or LUBA 134 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. An intergovernmental agreement (IGA) between a city and a county that establishes a county process and review procedure for a road improvement project located within the city on a county-owned road is a “final” decision, because the IGA may be the city’s only decision to rely on the county to process and review the proposed road improvement project, notwithstanding that pursuant to the IGA the county will proceed to adopt subsequent land use decisions. *MGP X Properties, LLC, LLC v. Washington County* 74 Or LUBA 378 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A comment letter that a city planner provides to a county hearings officer on a land use application before the county, regarding whether a proposed county road project is consistent with city legislation, is not a “final” decision regarding the application of city legislation, and therefore not a land use decision as defined at ORS 197.015(10)(a), even if the intergovernmental agreement that assigns the county land use approval authority over the project is on appeal to the Court of Appeals and potentially could become invalid. *MGP X Properties, LLC v. City of Sherwood*, 74 Or LUBA 476 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A comment letter from one jurisdiction to a second jurisdiction that has land use approval authority over a pending application is at best an interlocutory decision by the commenting jurisdiction regarding consistency with the commenting jurisdiction’s legislation, not a final decision subject to appeal to LUBA, or a final decision subject to transfer to circuit court. *MGP X Properties, LLC v. City of Sherwood*, 74 Or LUBA 476 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. If opponents of land use approval fail to comply with one or more mandatory requirements for perfecting a local appeal, but the county governing body nevertheless accepts the local appeal and renders a decision on the merits affirming the land use approval, opponents’ failure to comply with those mandatory requirements may provide a basis for reversing the governing body’s decision, but such failures do not mean opponents’ LUBA appeal must be dismissed for failure to exhaust administrative remedies. *Kaplowitz v. Lane County*, 74 Or LUBA 601 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where two county commissioners are disqualified from participating in a decision on a local appeal of a permit approval decision, the final written decision reflecting that action would look somewhat different from a decision on the merits of the local appeal. But the requirement in OAR 661-010-0010(3) that a decision must be reduced to writing before it can become final does not depend on the nature of the decision. *Rogue Advocates v. Josephine County*, 73 Or LUBA 98 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a petitioner’s notice of intent to appeal a decision was filed at LUBA after the board of county commissioners was unable to take action on a local appeal of a planning director’s decision that approved a permit application, but before the board of county commissioners reduced its decision to writing, the notice of intent to appeal was filed prematurely. Where the permit applicant files a petition for writ of mandamus more than 14 days after the board of commissioners’ hearing at which they failed to take action, and before the board of commissioners approved the minutes of that hearing, the circuit court has exclusive jurisdiction regarding the permit application, and LUBA does not have jurisdiction over the appeal. ORS 215.429(2) and (4). *Rogue Advocates v. Josephine County*, 73 Or LUBA 98 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. LUBA will tentatively deny a motion to dismiss based on the exclusion at ORS 197.015(10)(b)(H)(iii) for land use compatibility statements (LUCS) that identify local land use reviews, where (1) based on the record and pleadings LUBA cannot tell if the exclusion applies and (2) the appeal of the LUCS decision is consolidated with an appeal of a related land use decision regarding the availability of local appeal of the LUCS decision. Until it is determined whether a local appeal of the LUCS

decision was available, and hence whether the LUCS decision was a final decision capable of review by either LUBA or the circuit court, it is premature to resolve the jurisdictional question. *Todd v. Clackamas County*, 73 Or LUBA 369 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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 “final” decision within the meaning of ORS 197.015(10)(a)(A). *Jensvold v. Clatsop County*, 73 Or LUBA 417 (2016).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A letter from the city announcing that mountain biking is no longer allowed in a city-owned natural area is a final decision, absent an indication that the issue of whether mountain biking is allowed in the natural area remains an issue that is under consideration in a pending city management plan process or other land use plan process. *Northwest Trail Alliance v. City of Portland*, 71 Or LUBA 339 (2015).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a city’s code does not expressly provide that the city’s decisions are “final” for purposes of appeal to LUBA on the date notice is mailed to the parties, but a city code provision directs the planning director to include a statement in the notice of decision that the decision is final and may be appealed to LUBA within 21 days of the date of mailing, LUBA will interpret the code provision as intended to make the city’s decisions final on the date of mailing for purposes of OAR 661-010-0010(3), which authorizes local governments to determine the date of finality by local rule or ordinance. *Stevens v. City of Island City*, 71 Or LUBA 373 (2015).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. The Metro Council’s adoption by resolution of a master plan for a regional park is not a “final” decision for purposes of ORS 197.015(10)(a), where the master plan consists entirely of non-binding recommendations and guidelines to local governments, and the final, appealable decisions will be subsequent city or county plan and land use regulation amendments, if any, that may be adopted to give effect to the master plan’s recommendations or guidelines. *Terra Hydr Inc. v. Metro*, 68 Or LUBA 302 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. To constitute a “final” decision for purposes of ORS 197.015(10)(a), the decision must actually decide something. Where an adopted master plan is entirely precatory, without any possible land use effects unless and until its recommendations are embodied in other appealable decisions, LUBA’s review of that master plan would be entirely advisory. *Terra Hydr Inc. v. Metro*, 68 Or LUBA 302 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Generally, a decision that merely initiates a legislative proceeding leading to future amendments to a local government’s comprehensive plan or land use regulations is not a “final” decision subject to LUBA’s jurisdiction. *Terra Hydr Inc. v. Washington County*, 68 Or LUBA 515 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A county resolution that merely “acknowledges” a Metro master plan, and contemplates that the county will implement the Metro master plan by adopting future comprehensive plan amendments is not a “final” decision subject to LUBA’s jurisdiction. *Terra Hydr Inc. v. Washington County*, 68 Or LUBA 515 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city resolution that “approves” a Metro master plan, and directs staff to implement the master plan by proposing legislative comprehensive plan and land use regulation amendments, is not a “final” decision subject to LUBA’s jurisdiction. *Terra Hydr Inc. v. Washington County*, 68 Or LUBA 515 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city resolution that acknowledges a Metro trail master plan as a “reference document for decision-making purposes,” and directs staff to use the master plan as a “guide” for developing the trail proposed in the master plan and already planned and funded by the city, appears to be the city’s final decision implementing the master plan, and is therefore a final decision subject to LUBA’s jurisdiction. *Terra Hydr Inc. v. Washington County*, 68 Or LUBA 515 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A significant impact land use decision must be a “final” decision to be subject to LUBA’s jurisdiction. *Terra Hydr Inc. v. Washington County*, 68 Or LUBA 515 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A letter from a city planner that takes the position that a previously approved master plan has expired is not a “final” decision within the meaning of ORS 197.015(10)(a), where no application that seeks approval of a development proposal under the master plan has been submitted and the letter was sent as part of an informal, non-binding, advisory pre-application process. *Kaiser Permanente v. City of Portland*, 67 Or LUBA 111 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a city consolidates three related applications pursuant to ORS 227.175(2), but suspends processing of two applications and proceeds to issue a decision approving the third application, absent language that defers its finality the decision on the third application is a final decision subject to LUBA’s jurisdiction. Consolidation of applications under ORS 227.175(2) is at the request of the applicant, and nothing in the statute prevents a city, with the applicant’s consent, making a final decision on one application while separately processing other applications, or renders an otherwise final decision non-final until the city completes separate processing of the other applications. *Save Downtown Canby v. City of Canby*, 67 Or LUBA 385 (2013).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city resolution that generally contains (1) a description of a surface water supply system from its early days to the present, (2) a chronology of various proposals to improve the surface water supply system, and (3) an expression of the city’s commitment to maintain and improve the surface water supply facility is not a “final decision” to proceed with the water supply system improvement project, where somewhat contemporaneously with its adoption of the resolution the city adopted a

water public facilities plan that includes the surface water improvement project. *Central Oregon Landwatch v. City of Bend*, 66 Or LUBA 101 (2012).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. An unsigned printout of a local government computer database entry for an encroachment permit is not the permit itself, and does not represent a final decision of any kind. *Brodersen v. City of Ashland*, 66 Or LUBA 369 (2012).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. An ordinance that deletes text from a county zoning ordinance is a final decision, notwithstanding that the county also adopted a resolution initiating proceedings before the planning commission to recommend future land use regulation amendments to replace the text deleted from the zoning ordinance. *Hatley v. Umatilla County*, 66 Or LUBA 427 (2012).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. LUBA will not grant the local government’s motion to dismiss an appeal based on its argument that the challenged decision is not “final” within the meaning of OAR 661-010-0015(1)(a), where the challenged decision appears to be the local government’s final determination that the proposed use is a permitted use under its land use regulations. *Jacobsen v. City of Winston*, 62 Or LUBA 535 (2010).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local ordinance that provides that a decision becomes effective 14 days after mailing notice of the decision means that the decision is *effective* at that date. The ordinance does not delay the date the

decision becomes *final* for purposes of appeal to LUBA under OAR 661-010-0010(3). *VK Northwest, Inc. v. City of West Linn*, 60 Or LUBA 39 (2009).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Even though the language of a final decision is somewhat misleading in stating that it becomes final at a later date, a misstatement of fact and law in the decision does not excuse a petitioner from filing a timely notice of intent to appeal. *VK Northwest, Inc. v. City of West Linn*, 60 Or LUBA 39 (2009).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a city building official denies a building permit application based on an interpretation set forth by the city planning director in a previous letter to the applicant, an appeal of the building official’s denial is not a collateral attack of the planning director’s previous letter or require dismissal under the reasoning in *Lloyd Dist. Community Assoc. v. City of Portland*, 30 Or LUBA 290 (1996), where the building official’s decision is the city’s final decision on the applicant’s building permit applications, the decision is subject to criteria the planning director did not consider in the previous letter, and the building official applies the planning director’s interpretation to a specific set of facts that the planning director did not consider. *Noble Built Homes, LLC v. City of Silverton*, 60 Or LUBA 460 (2010).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A governing body’s decision to adopt a resolution initiating a legislative comprehensive plan amendment process is the first step in a multi-step proceeding that will likely culminate in a final decision, but that resolution is not itself a final decision subject to LUBA’s jurisdiction. Any alleged procedural errors in adopting the resolution may be challenged in an appeal of the local government’s final decision, if not rendered harmless or cured by later proceedings. *Setniker v. Polk County*, 58 Or LUBA 87 (2008).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. An erroneous statement in the notice of decision that the decision can be appealed to LUBA does not affect whether the decision is a land use decision or otherwise affect LUBA’s jurisdiction. *Setniker v. Polk County*, 58 Or LUBA 87 (2008).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Local laws that only delay the date an ordinance takes effect do not also delay the date an ordinance becomes final for purposes of appeal to LUBA. *Reeves v. City of Wilsonville*, 58 Or LUBA 545 (2009).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. It does not follow that any decision that is reduced to writing and signed by the necessary decision makers is

necessarily a “final decision,” within the meaning of ORS 197.015(11)(a). *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a planning commission decision is appealed to the board of county commissioners, the planning commission’s decision is not final. *Dunn v. Yamhill County*, 55 Or LUBA 206 (2007).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local government may not break up a single decision into “final” and “non-final” components so that the decision is appealable in part to LUBA and in part locally; a decision that attempts to do so is not a final decision as to any part and is therefore not a land use decision within the meaning of ORS 197.015(11). *Yun v. City of Portland*, 54 Or LUBA 155 (2007).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city decision to defer making a decision about whether a recently enacted statute operates retroactively to invalidate an annexation ordinance while the property owner’s appeal of that annexation ordinance is pending before the Court of Appeals is not a final decision, and, because it is not a final decision, it is not a land use decision subject to review by LUBA. *Leupold & Stevens, Inc. v. City of Beaverton*, 53 Or LUBA 203 (2007).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A property owner’s request that a city apply a statute to invalidate a previously enacted annexation ordinance is not an application for a boundary change, which would require that the city adopt a land use decision. *Leupold & Stevens, Inc. v. City of Beaverton*, 53 Or LUBA 203 (2007).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A “land use decision,” as that term is defined in ORS 197.015(11)(a)(A), must be a final decision. A county’s denial of an applicant’s motion to dismiss a local appeal of an administrative approval is an interlocutory decision, not a final decision, and therefore is not an appealable land use decision. *Ratzlaff v. Polk County*, 53 Or LUBA 480 (2007).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Based on *dicta* in *Kalmiopsis Audubon Society v. Curry County*, 131 Or App 308, 884 P2d 894 (1994), it is theoretically possible to appeal a decision that purports to correct a “clerical error” in a final, unappealed decision, as long as the petitioner demonstrates that the correction qualifies as a land use decision and the appeal is narrowly focused on the correction itself, rather than the unappealed decision. *Hoschek v. Tillamook County*, 52 Or LUBA 793 (2006).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where the Metro Code provides that when a necessary party appeals a city boundary change decision to Metro the city boundary change decision is not final until the appeal is resolved, LUBA does not have jurisdiction to review that city boundary change decision while the Metro appeal is pending, because LUBA’s review jurisdiction is limited to “final” decisions. *City of Happy Valley v. City of Damascus*, 51 Or LUBA 141 (2006).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A letter from county counsel explaining that previously issued building permits were properly issued and will not be revoked merely repeats a previously issued decision and is not a final land use decision that may be appealed to LUBA. *Johnston v. Marion County*, 51 Or LUBA 250 (2006).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A board of county commissioners order that calls up a hearings officer’s decision denying a conditional use permit application for a *de novo* hearing is an interlocutory order and not a final decision subject to LUBA’s jurisdiction. *Gould v. Deschutes County*, 51 Or LUBA 493 (2006).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A board of county commissioners order declining discretionary review of a hearings officer’s decision would usually have the effect of making the hearings officer’s decision the county’s final decision appealable to LUBA. However, where the commissioners decline review because the commissioners have called up the hearings officer’s decision for review at a *de novo* hearing at which the petitioner may appear and raise any issues, the order does not have the effect of making the hearings officer’s decision the county’s final decision, and the order declining petitioner’s local appeal is not itself a final decision appealable to LUBA. *Gould v. Deschutes County*, 51 Or LUBA 493 (2006).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a county governing body affirms a planning commission decision denying a building permit to expand an existing nonconforming use but remands to the planning commission for a determination of the type of review required with regard to the nonconforming use, the governing body’s decision is not a “final” decision, and LUBA lacks jurisdiction to review it, notwithstanding petitioner’s allegation that the governing body’s remand was *ultra vires*. *Vanspeybroeck v. Tillamook County*, 51 Or LUBA 546 (2006).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a city council exercises its authority to review a decision of a hearings officer granting approval of site development review, sensitive lands review and adjustments for a proposed development and, in substance, affirms the hearings officer’s decision, its action is a final land use decision and is subject to LUBA’s jurisdiction. *Beilke v. City of Tigard*, 51 Or LUBA 837 (2006).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A condition of site plan approval that calls for mediation to develop possible mitigation measures for an asphalt recycling plant does not delay the effective date of the decision where there is no language in the condition that suggests that was the local governments intent and the notice of the decision states

that the decision can be appealed to LUBA. *Clearwaters v. Josephine County*, 50 Or LUBA 600 (2005).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Ordinances that adopt comprehensive plan and land use regulation amendments are final decisions that are appealable to LUBA, notwithstanding language in those ordinances that delays their effective date until the Department of Land Conservation and Development completes periodic review and requires the city to adopt a subsequent ordinance, where those ordinances all provide notice that the decision is appealable to LUBA. *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A resolution adopted pursuant to ORS 222.111(2) to initiate annexation proceedings that sets a date for an election in the area to be annexed, but dispenses with a separate vote within the city to approve the annexation, is not the city’s “final” decision regarding the annexation, and for that reason such a resolution is not a land use decision. Following adoption of such a resolution, ORS 222.120(4) requires that the city provide a public hearing and thereafter the city must adopt an ordinance to declare that the territory is annexed provided a majority of voters in the territory to be annexed approve. *City of Happy Valley v. City of Damascus*, 49 Or LUBA 553 (2005).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Whether a local government decision is a “final” decision is primarily governed by the form of the decision and whether all local appeals have been exhausted. That an otherwise final temporary decision may ultimately expire or be replaced by another decision does not mean that the temporary decision is not a final decision subject to appeal to LUBA. *Curl v. City of Bend*, 48 Or LUBA 530 (2005).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Contrary to *Thede v. Polk County*, 1 Or LUBA 339 (1980), irregularities in signing and approving a final city decision does not mean that the challenged decision is not a “final decision” subject to LUBA’s jurisdiction. *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 618 (2004).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. In construing an initiative, a court attempts to discern the intent of the voters, based foremost on text and context of the initiative itself. While the chief petitioners may have intended that an initiative that preserves the city waterfront for a public park function as a mere straw poll on the future of the waterfront, the text and context of the initiative indicate that the voters intended to establish a binding policy effectively rezoning the city waterfront as a public park. The initiative is therefore a final, non-advisory decision for purposes of LUBA’s jurisdiction. *Port of Hood River v. City of Hood River*, 47 Or LUBA 62 (2004).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A county counsel stipulation in a mandamus proceeding that purports to determine the zoning of property is in essence a declaratory ruling interpreting an ambiguous ordinance concerning the zoning of property and is a final determination subject to LUBA’s jurisdiction. *Flying J, Inc. v. Marion County*, 47 Or LUBA 637 (2004).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A decision that (1) announces that the local government has reconsidered what is otherwise a final appealable decision, and (2) identifies a future decision on reconsideration as the final appealable decision effectively renders the original decision a tentative, non-final decision that is not within LUBA’s jurisdiction. *Grabhorn v. Washington County*, 46 Or LUBA 672 (2004).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A decision to reconsider an earlier decision and reserve final judgment on the merits of that earlier decision is not itself a land use decision subject to LUBA’s jurisdiction, where the decision to reconsider does not concern the application of any comprehensive plan provision or land use regulation, and the decision to reconsider is accurately characterized as an interlocutory decision and not a final decision of any kind. *Grabhorn v. Washington County*, 46 Or LUBA 672 (2004).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A resolution that authorizes a city to acquire property is a “final” decision, where the only remaining act that would be required to transfer title to the property is a deed or a circuit court judgment pursuant to ORS 35.325 following an exercise of eminent domain by the city, because such a deed or circuit court judgment would not be land use decisions subject to LUBA review. *Willamette Oaks, LLC v. City of Eugene*, 46 Or LUBA 813 (2004).

26. 2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. To the extent a surveyor’s signature on a final partition plat denotes a decision concluding that the partition conforms with applicable land use regulations, for the purposes of an appeal to LUBA, that decision is final when the surveyor signs the final partition plat. *Hammer v. Clackamas County*, 45 Or LUBA 32 (2003).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. If a county governing body errs in rejecting an attempted local appeal of a planning commission decision, LUBA will remand the county governing body’s decision so that the county may provide the required local appeal, but LUBA will dismiss an attempted direct appeal of the planning commission decision because the county governing body’s decision on remand will be the county final decision that is subject to LUBA review. *Burke v. Crook County*, 45 Or LUBA 516 (2003).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a county governing body determines that it has conflicts that prevent it from considering a local appeal of a planning commission decision, and rejects the appeal without identifying any appealable error on the local appellant’s part: (1) the local appellant is not obligated to seek LUBA review of the county governing body’s decision; (2) the local appellant has satisfied the statutory requirement that he exhaust local remedies before appealing to LUBA; and (3) the planning commission decision becomes the county’s final decision and subject to appeal to LUBA. *Burke v. Crook County*, 45 Or LUBA 516 (2003).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where the respondent argues that its decision is merely a recommendation to another governing body, and thus not a final decision, and the petitioner fails to respond to that argument, the petitioner has not

met his burden of establishing the Board's jurisdiction, and the appeal will be dismissed. *Ziemer v. City of Florence*, 43 OR LUBA 1 (2002).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a timely request is filed to locally appeal a decision made without a hearing under ORS 215.416(11) or 227.175(10), the local government must conduct a *de novo* hearing and render a final decision approving or denying the permit application. Where the local government conducts a *de novo* hearing and renders a final decision, the decision made without a hearing is not and cannot become a final decision, and cannot be appealed to LUBA under ORS 197.830(4) or any other provision of law. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 597 (2002).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a timely request is filed to locally appeal a decision made without a hearing under ORS 215.416(11) or 227.175(10) and a *de novo* hearing is held, but the request is withdrawn and the local appeal dismissed prior to reaching a final decision on the local appeal, the underlying decision made without a hearing becomes the county's final land use decision on the permit application. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 597 (2002).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where the *de novo* hearing provided under ORS 215.416(11) or 227.175(10) is dismissed without reaching a decision on the permit application, the underlying decision made without a hearing becomes the final land use decision on the permit application, as of the date of the order dismissing the local appeal. The underlying decision does not become final retroactively back to the date the local appeal period expired. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 597 (2002).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local decision to deny a motion to dismiss filed during a local land use appeal is not a separate final land use decision subject to an appeal to LUBA. *Riddell Farms, Inc. v. Polk County*, 41 Or LUBA 47 (2001).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a board of commissioners declares that it is biased, recuses itself from an appeal of a hearings officer’s land use decision, and designates a hearings officer’s decision as the county’s final decision, the hearings officer’s decision may be appealed to LUBA, notwithstanding local code provisions that grant a party a right to a local appeal before the board of commissioners. *Hiebenthal v. Polk County*, 41 Or LUBA 316 (2002).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. The right to an impartial tribunal will supersede petitioners’ right to a local appeal, where denying the local appeal will not deprive petitioners of an opportunity to have a local decision reviewed on the merits. *Hiebenthal v. Polk County*, 41 Or LUBA 316 (2002).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a planning director’s decision to revoke a previously approved appeal fee waiver and reject petitioner’s local appeal was final when rendered, and petitioner did not file a timely appeal with LUBA to challenge that decision, petitioner may not challenge the fee waiver revocation and denial of the local appeal in an appeal of a subsequent planning director letter that merely reiterates the earlier decision. *Babbitt v. City of Portland*, 41 Or LUBA 151 (2001).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A decision amending a city’s comprehensive plan housing needs inventory and analysis pursuant to ORS 197.296(3) is a *final* decision and therefore a “land use decision” as defined by ORS 197.015(10)(a)(A), notwithstanding that the amended inventory and analysis may require the city to adopt further land use decisions to comply with ORS 197.296(4) and (5). *DLCD v. City of McMinnville*, 40 Or LUBA 591 (2001).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A resolution that directs planning staff to continue a legislative process to develop a plan governing future expansion of the state medical university is not a *final* decision and for that reason is not a land use decision under either the statutory test at ORS 197.015(10) or the significant impact test. *No Tram to OHSU v. City of Portland*, 40 Or LUBA 411 (2001).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A staff letter acknowledging that a hydrogeologic report satisfies the code requirements for a pre-application evidentiary submission, but that does not purport to determine that the evidence is or will be sufficient to show compliance with approval criteria once the application is filed, is not a final land use decision subject to LUBA’s jurisdiction. *Harcourt v. Marion County*, 40 Or LUBA 393 (2001).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a local ordinance limits appeals of local land use decisions to “land use decisions” as that term is defined in the local ordinance, a petitioner is not entitled to a local appeal where petitioner fails to demonstrate that the decision he wishes to appeal is a “land use decision” within the city’s definition of the term. *Robinson v. City of Silverton*, 40 Or LUBA 159 (2001).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where the first and second steps of a four-step PUD approval process each yield decisions that are not final

or binding in any respect, neither the local government's decision granting first-step approval nor its decision granting second-step approval is a final land use decision subject to LUBA's jurisdiction. *Neighbors for Sensible Dev. v. City of Sweet Home*, 40 Or LUBA 21 (2001).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where the first step of a three-step planned unit development (PUD) approval process yields a decision that is final and binding in certain respects, the local government's decision granting such approval is a final land use decision subject to LUBA's jurisdiction. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local government may not separate an otherwise unitary land use decision into separate components, remand some components for further local proceedings and designate some components as immediately appealable to LUBA. *Besseling v. Douglas County*, 39 Or LUBA 177 (2000).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. LUBA will dismiss an appeal of a component of a local decision for lack of finality where it is clear that the local government has separated an otherwise unitary land use decision into separate components, and remanded some of those components for further local proceedings. *Besseling v. Douglas County*, 39 Or LUBA 177 (2000).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. When a party receives notice of a land use decision by means of a follow-up clarification letter, an appeal of that clarification letter is sufficient to appeal the earlier land use decision, as long as the appeal is filed within the period in which the party could have timely appealed the land use decision. *Kent v. City of Portland*, 38 Or LUBA 942 (2000).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city council decision to hire an appraiser and begin the process of condemning property for waste disposal purposes does not constitute a land use decision because it is not a "final" decision, where it is clear that the decision is neither a final decision to purchase property nor a final decision concerning whether the property may be used for waste disposal under applicable land use standards. *E & R Farm Partnership v. City of Gervais*, 37 Or LUBA 702 (2000).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Objection to LUBA's jurisdiction may be raised at any time and the filing of the record in an appeal does not and could not have the legal effect of establishing that LUBA has jurisdiction. *E & R Farm Partnership v. City of Gervais*, 37 Or LUBA 702 (2000).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A notice of intent to appeal is timely filed where the county code specifies that land use decisions become final when mailed to the parties entitled to notice, and petitioner filed the notice of intent to appeal within 21 days of the date the county mailed the decision. *Warrick v. Josephine County*, 36 Or LUBA 796 (1999).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local code provision that delays the “effective date” of a decision does not delay the date the local decision becomes “final” for purposes of appeal to LUBA. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. 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).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Although deficiencies in a hearings officer’s notice of hearing may provide a basis for direct appeal of the hearings officer’s decision to LUBA under ORS 197.830(3), where a local appeal is filed and the city council makes a decision in the appeal, the hearings officer’s decision is not the city’s final decision and is not subject to appeal to LUBA under ORS 197.830(3). *Bigley v. City of Portland*, 36 Or LUBA 517 (1999).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. An argument that a party failed to file a timely appeal of a local planning department’s decision may, if correct, provide a basis for reversing the land use decision that ultimately resulted from the local appeal; but it would not provide a basis for dismissing the LUBA appeal. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a regional government endorses expansion of the UGB as the initial step in a three-step process requiring subsequent county approval and consideration under the statewide planning goals followed by final action by the regional government, the regional government’s initial endorsement is not a final land use decision subject to LUBA’s jurisdiction. *1000 Friends of Oregon v. Metro*, 35 Or LUBA 720 (1999).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city decision requesting that Metro initiate proceedings to amend the urban growth boundary and designated urban reserves is not a “final” decision subject to LUBA review. *Dickert v. City of Wilsonville*, 35 Or LUBA 52 (1998).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A decision is not final until it is reduced to writing and signed by the authorized decision maker. An applicant may withdraw the application prior to the time the decision becomes final, even if an oral decision has already been made. *Witzel v. Harney County*, 34 Or LUBA 433 (1998).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a local appeal of a property line adjustment decision is rejected on the basis that no local appeal is available and petitioner appeals both the property line adjustment decision and the denial of the local appeal but only assigns error to the property line adjustment decision, the property line adjustment decision will be considered the “final” local decision and is subject to review at LUBA. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a local code does not specify a date upon which a decision becomes final, OAR 661-10-010(3) specifies that the decision becomes final on the date it is reduced to writing and signed by the decision maker. *Adams v. City of Ashland*, 33 Or LUBA 552 (1997).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Generally, where a local government approves a street improvement project, and in a later decision awards a contract to build the improvement, the reviewable decision is the initial decision to approve the project. *Knapp v. City of Jacksonville*, 33 Or LUBA 457 (1997).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A decision to proceed with an environmental assessment pursuant to the National Environmental Policy Act as part of a feasibility determination is not a final decision over which LUBA has jurisdiction, because it does not actually approve or deny a land use. *Cole v. Lane Transit District*, 33 Or LUBA 201 (1997).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A “legal lot verification” service provided by the county results in a preliminary, advisory opinion as to whether a lot was legally created. The service does not create a binding final land use decision over which LUBA has jurisdiction. *Davis v. Lane County*, 32 Or LUBA 267 (1997).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. If a DSL finding of compatibility is not based on a final land use decision made by the city, LUBA lacks jurisdiction over the appeal from the finding of compatibility. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A DSL finding of compatibility that relies on the separate opinions of two city planners and the city attorney is not based on a final land use decision made by the city. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Although OAR 660-31-035(1), which governs Class A permits, does not require that an affected local government’s compatibility determination either be in writing or be supported by written findings in order to be relied upon by a state agency issuing a permit, the absence of a writing raises the question of whether there actually is a local government determination. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Two factors govern whether a local government’s determination of compatibility with its acknowledged plan and regulations, made as part of a state agency approval process, is a “final” decision applying the local government’s plan and regulations: (1) the state agency must be required by statute, rule or other authority, to assure that the proposal is compatible with the local government plan and regulations; and (2) the state agency must be authorized by statute, rule or other legal authority to rely on the local government’s determination. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a petitioner challenges a county’s authority to process an application for a lot line adjustment on the basis that there has never been a legal determination that the property consists of more than one parcel, such a challenge is an impermissible collateral attack on an earlier determination, if such a determination has been made. However, where the record does not reflect that any legal determination has been made, petitioner may challenge the county’s authority to proceed with a lot line adjustment on the premise that the property consists of two parcels. *Higgins v. Marion County*, 30 Or LUBA 426 (1996).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. While a local government can make a de facto land use decision without satisfying procedural or substantive requirements for a land use decision, a county does not make a de facto land use decision by merely acquiescing to a property owner’s desired characterization of his property. *Higgins v. Marion County*, 30 Or LUBA 426 (1996).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A county minute order that accepts a staff report, but makes no decision to initiate action to consider modification of a condition to an existing permit, is not itself a final decision appealable to LUBA. *Anderson v. Washington County*, 30 Or LUBA 240 (1995).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A notice of intent to appeal to LUBA that designates a corrected decision is timely if filed within the period allowed for appeals of the original (final) decision. *Caraher v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Notwithstanding the standards in OAR 661-10-010(3) addressing when a decision becomes final, the physical form of the decision is less important than the finality accorded it by the city’s codes and procedures and by subsequent actions relying upon it. *No Casino Association v. Lincoln City*, 30 Or LUBA 79 (1995).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. The pursuit of a nonexistent local right of appeal does not suspend the date a land use decision becomes final for purposes of appeal to LUBA. *No Casino Association v. Lincoln City*, 30 Or LUBA 79 (1995).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Under OAR 661-10-010(3), a document containing findings of fact and conclusions of law that is signed by the

mayor and attested by the city recorder is a final decision, but if the city has no authority to take the action reflected in the decision, the final decision is not a land use decision. Subsequent adoption with authority is a land use decision appealable to LUBA. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a local government decision to classify petitioner’s proposed comprehensive plan amendment as “major” is final, and denies petitioner a *right* he would otherwise have under the local code to have his proposed amendment reviewed on its merits, the local government’s decision is a land use decision as defined in ORS 197.015(10)(a)(A)(iii) and is subject to review by LUBA. *Cone v. City of Eugene*, 29 Or LUBA 133 (1995).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local government resolution requesting ODOT not to build a particular freeway ramp is a final, reviewable land use decision if (1) the local government’s comprehensive plan includes any provision the substance of which applies to such a recommendation, and (2) ODOT may choose to abandon the disputed ramp project without taking any action that *requires* the local government to amend its plan or demonstrate compliance with it. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 541 (1995).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A LUBA appeal must be initiated within 21 days after a local governing body adopts its written order, unless petitioners establish that (1) the local government plan or code grants a right to seek rehearing or reconsideration of the governing body’s order; (2) petitioners sought such rehearing or reconsideration; and (3) under local legislation, such a request for rehearing or reconsideration has the effect of preventing the governing body’s order from becoming a *final* decision. *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Under either the statutory test or the significant impact test, a “land use decision” must be a *final* decision. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A planning director letter stating certain uses are permitted outright under the local code is not a “final” decision, where that letter is either superseded or qualified by a subsequent planning director letter stating a final determination on whether such uses are permitted outright on the subject property will be made in the building permit process. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local government’s determination of compatibility with its acknowledged comprehensive plan and land use regulations, made as part of a state agency permit approval process, is a “final” decision applying the local plan and regulations if (1) the state agency is required, by statute, rule or other legal authority, to assure the permit is compatible with the local plan and regulations; and (2) the state agency is authorized to rely on the local government’s determination of compatibility. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a local government’s statements on a state agency permit land use compatibility form identify the code provisions relied on by the local government and explain the basis for the local government’s determination that the subject facility is an outright permitted use, the statements constitute written findings which, under OAR 661-31-035(2), entitle a state agency to rely on the local government’s compatibility determination. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city’s approval of a motion to extend a city street is the city’s final decision to pave the street, not the city’s subsequent decision to award the contract to pave the street. *Carlson v. City of Dunes City*, 28 Or LUBA 770 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where petitioners presented a discrete land use question concerning the use of certain property for film-making purposes to the board of commissioners at its meeting, but statements made by commission members indicate the commission explicitly did *not* answer the land use question petitioners presented, no land use decision was made. *Bach v. Deschutes County*, 28 Or LUBA 58 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a notice of intent to appeal states the challenged decision is a planning commission recommendation to the governing body, the local government moves to dismiss the appeal on the ground the challenged decision is not final, and petitioner fails to respond to the motion to dismiss, the appeal will be dismissed. *Braun v. City of La Grande*, 27 Or LUBA 581 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city council decision to receive a staff report as information only and not to proceed with a public hearing is not a land use decision. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where certain parties requested that a local government determine whether a particular development complies with all requirements of its land use regulations, a letter by the local government planning director making the requested determination is a final land use decision, even though not issued pursuant to a local process for making binding declaratory rulings. *Hart v. Jefferson County*, 27 Or LUBA 688 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a local government compliance hearings officer order (1) applies the local zoning ordinance to the relevant facts in determining petitioners violated that ordinance, and (2) is the local government’s final determination on the issues decided, the order is a “land use decision” subject to review by LUBA. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city resolution asking ODOT not to construct a particular transportation improvement and to spend the funds allocated to that project for other purposes, including development of a transportation master

plan for the area, is merely a recommendation to ODOT concerning actions within ODOT's authority, not a "final" land use decision reviewable by LUBA. *Central Eastside Industrial Council v. Portland*, 26 Or LUBA 540 (1994).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a local government makes a decision denying its own application to vacate a street and thereafter, in the same decision, withdraws the pending vacation application, the local government has made a final land use decision subject to review by LUBA. *Lane v. City of Klamath Falls*, 26 Or LUBA 295 (1993).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Local regulations govern the determination of *when* a local government decision is final for purposes of LUBA review, so long as the local regulations do not conflict with applicable statutes or LUBA's rules. *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local government decision that makes a binding interpretation of its regulations, without amending or adopting regulation provisions or granting or denying a development application, is a "final" decision, even if other actions are required to give that decision practical effect. *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city resolution initiating a boundary commission proceeding to consider annexation of property pursuant to ORS 199.490 is not a final decision and, for that reason, is not a land use decision as defined by ORS 197.015(10)(a)(A). *Interlachen, Inc. v. City of Fairview*, 25 Or LUBA 618 (1993).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city resolution initiating a boundary commission proceeding under ORS 199.490 to consider annexation of property is not a final land use decision, where the boundary commission is not authorized to rely on comprehensive plan compliance findings in the city resolution and must itself make a determination of plan compliance. *Interlachen, Inc. v. City of Fairview*, 25 Or LUBA 618 (1993).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A letter sent by the planning director to the applicant, four months before a city decision granting PUD final development plan approval, does not constitute a final, appealable city decision with regard to the duration of the subsequent PUD final development plan approval. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Local ordinances governing when a local decision becomes final are effective only to the extent they do not conflict with state statutes. *A Storage Place v. City of Tualatin*, 24 Or LUBA 637 (1993).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. LUBA's rejection of petitioners' arguments that the challenged decision is final, does not mean petitioners' arguments were presented without probable cause to believe they were well-founded. Whether a

challenged decision is a “final” decision is, more often than not, far from obvious. *City of North Plains v. Washington County*, 24 Or LUBA 623 (1993).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where local government has a direct role to play in the adoption of local legislation affecting land use, and the local electorate must vote to approve or reject such legislation, the reviewable land use decision occurs at the time when the governing body determines the legislation complies with applicable land use laws. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 607 (1992).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where an ordinance is adopted by initiative, and the local government has no role to play in determining the ordinance’s compliance with applicable land use laws, the reviewable land use decision is made when the election results are certified by the county clerk. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 607 (1992).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Although a city may be limited to an advisory role with regard to requests to rezone property located outside its municipal boundaries, where it adopts an ordinance granting the requested rezoning, the decision is a final decision subject to LUBA review. *Hofmann v. City of Seaside*, 24 Or LUBA 183 (1992).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A county planning director’s letter stating he will initiate an application for development approval is not a final land use decision subject to LUBA’s review authority. *City of North Plains v. Washington County*, 24 Or LUBA 78 (1992).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a formal declaratory ruling process established in a local government’s code is not used, but an application or request for a plan or code interpretation initiates a process which provides the equivalent of a formal declaratory ruling process, including the right to notice and hearing, and that process results in the adoption of a written decision by the highest level local government review authority interpreting the plan or code, the decision is a land use decision subject to LUBA’s review authority. *Brogoitti v. Wallowa County*, 23 Or LUBA 247 (1992).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local code provision that requires the planning commission to conduct a site review of certain proposed developments, but which establishes no separate procedure for site review, does not prevent a city council decision approving a conditional use permit for the proposed development from being a final land use decision appealable to LUBA, even though the planning commission never conducted such site review. *Citizens for Resp. Growth v. City of Seaside*, 23 Or LUBA 100 (1992).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where the challenged decision does not purport to adopt or amend land use regulations, was not issued as a part of a decision approving or denying a permit, and is not the result of any motion of the decision making body, but rather is only a reflection of the impressions of the individual decision makers concerning the validity of a conditional use permit, such decision is not a final decision and,

therefore, is not a land use decision within LUBA's jurisdiction. *Weeks v. City of Tillamook*, 22 Or LUBA 667 (1992).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. LUBA reviews the decision maker's final written decision, not statements made during the proceedings leading to adoption of the challenged decision. Such statements are preliminary and subject to change in the final decision. *Toth v. Curry County*, 22 Or LUBA 488 (1991).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a challenged decision does not purport to adopt or amend land use regulations, was not issued as a part of a decision approving or denying a permit, and is not the result of any motion of the decision making body, but rather is an expression of how various individual decision makers "felt" about the proposal as reflected in the minutes, the challenged decision is an advisory opinion only and is not a final land use decision subject to LUBA's jurisdiction. *Owen Development Group, Inc. v. City of Gearhart*, 22 Or LUBA 418 (1991).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. LUBA's jurisdiction over county decisions applying land use standards extends only to *final* decisions. *Pilling v. LCDC*, 22 Or LUBA 188 (1991).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. When a local government interprets existing comprehensive plan or land use regulation provisions without amending or adopting plan or land use regulation provisions or granting or denying a development permit or other land use approval, such a decision is a *final* decision if it is issued pursuant to an established local process for issuing binding declaratory rulings. *Hollywood Neigh. Assoc. v. City of Portland*, 21 Or LUBA 381 (1991).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. LUBA's review jurisdiction is limited to final decisions, and a recommendation from one governing body to a second governing body concerning an action within the jurisdiction of the second governing body is not a final decision subject to review by LUBA. *Goose Hollow Foothills League Assoc. v. Portland*, 21 Or LUBA 358 (1991).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A local government decision adopting a proposed wetlands conservation plan for subsequent submittal to the director of Division of State Lands is not a final decision. *Blatt v. City of Portland*, 21 Or LUBA 510 (1991).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. An ordinance which adopts a natural resources management plan (NRMP) pursuant to local code provisions is a *final* decision with regard to adoption of a NRMP, even though the NRMP is also a *proposed* wetlands conservation plan and is submitted to the DSL for approval as such. *Blatt v. City of Portland*, 21 Or LUBA 510 (1991).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city ordinance referring a charter amendment to prohibit solid waste incinerators is the city's final

decision, not the subsequent vote of the citizens approving the charter amendment. *Jentzsch v. City of Sherwood*, 20 Or LUBA 575 (1991).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a county hearings officer remands an application to the planning director for further action on certain issues, the hearings officer has not yet made any *final* decision on the application. Only when all county proceedings on the subject application are complete will the county have made its *final* decision on the application. *Tylka v. Clackamas County*, 20 Or LUBA 296 (1990).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where petitioners appeal a letter from the county court’s counsel, stating the county court (1) has decided not to conduct any further review of petitioners’ local appeal of a planning commission decision, and (2) considers the planning commission decision to be final, that letter constitutes the county’s final decision on petitioners’ local appeal, and petitioners have not failed to exhaust their administrative remedies. That the county court’s decision not to conduct any further review of petitioners’ appeal may have been erroneous does not affect LUBA’s jurisdiction. *Komning v. Grant County*, 20 Or LUBA 481 (1990).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A city charter provision delaying the effective date of an ordinance does not also delay the date the ordinance becomes a final decision subject to appeal to LUBA. *Club Wholesale v. City of Salem*, 19 Or LUBA 576 (1990).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a timely appeal to the planning commission from the city administrator’s decision on petitioners’ application was filed, the city administrator’s decision was not a *final* decision by the city on petitioners’ application. If petitioners withdraw their application before the city makes a final decision on it, any decision made by the city on that application after its withdrawal is not a final land use decision subject to LUBA’s jurisdiction. *Torgeson v. City of Canby*, 19 Or LUBA 214 (1990).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. A county order selecting a preferred alternative site for a new bridge and directing staff to file necessary land use applications is not a “statutory test” land use decision, because it is only the expression of the board of commissioners’ preliminary preference for the location of a new bridge, not a final decision selecting the site for a new bridge. *McKenzie River Guides Assoc. v. Lane County*, 19 Or LUBA 207 (1990).

26.2.2 LUBA Jurisdiction – Land Use Decision: Statutory Test – Final Decision. Where a county’s land development ordinance provides for adoption of resolutions of intent to rezone and makes such resolutions binding commitments that the county will grant rezoning when conditions stated in such resolutions of intent to rezone are met, a resolution of intent to rezone is a final appealable decision. *Headley v. Jackson County*, 19 Or LUBA 109 (1990).