

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. A county’s decision to approve the construction of a bridge and related trail improvements in an EFU zone is both a land use decision and a “permit,” as defined in ORS 215.402(4), where LUBA previously concluded that approval of the transportation project including the bridge and related trail improvements is a conditional use in the EFU zone and where the construction of the bridge and related trail improvements constitutes the “development of land” within the meaning of ORS 215.402(4). *Van Dyke v. Yamhill County*, 81 Or LUBA 427 (2020).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. LUBA will reject an argument that the construction of a pedestrian bridge and related trail approaches proposed as a part of a trail development project qualifies as a “fire service facility” under ORS 215.283(1)(s) where the record does not support the county’s assertion that the intended use of the bridge is for fire protection. *Van Dyke v. Yamhill County*, 81 Or LUBA 427 (2020).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. ORS 197.015(10)(b)(D), which excludes from the definition of “land use decision” a local government decision regarding transportation facilities, encompasses technical decisions regarding operation, maintenance, etc., of transportation facilities that are planned and authorized under the plan and zoning code. The exclusion does not encompass decisions that adopt or modify plan or zoning code text regarding transportation facilities. *Columbia Pacific v. City of Portland*, 76 Or LUBA 15 (2017).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. A city decision concerning a request to place an encroachment within the right-of-way bordering a pedestrian sidewalk is a decision that concerns the “maintenance” and “preservation” of the sidewalk, a city transportation facility, and thus falls within the exclusion to LUBA’s jurisdiction at ORS 197.015(10)(b)(D). *Bristol Creek Homes and Development v. City of Portland*, 74 Or LUBA 138 (2016).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. ORS 197.015(10)(b)(D) excludes from the definition of “land use decision” a decision that determines the maintenance, etc., of a transportation facility that is “otherwise authorized by and consistent with the comprehensive plan and land use regulations.” A transportation facility may be “authorized by and consistent with the comprehensive plan and land use regulations” for purposes of ORS 197.015(10)(b)(D) notwithstanding that the facility was previously approved subject to waivers or variances from applicable standards. *Bristol Creek Homes and Development v. City of Portland*, 74 Or LUBA 138 (2016).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. A decision to place barricades in a city street to restrict vehicular access is a decision related to the “operation” of a transportation facility for purposes of ORS 197.015(10)(b)(D). *7th Street Station, LLC v. City of Corvallis*, 58 Or LUBA 93 (2008).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. The exception to LUBA’s jurisdiction, at ORS 197.015(10)(b)(D), for a decision that

“determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations” is ambiguous, as it is not clear whether what must be “authorized by and consistent with” the plan and regulations is both the design, construction, operation, etc., and the transportation facility, or only the transportation facility. *7th Street Station, LLC v. City of Corvallis*, 58 Or LUBA 93 (2008).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. A decision to close a city street to vehicular traffic is subject to the exception to LUBA’s jurisdiction, at ORS 197.015(10)(b)(D) for decisions that determine the “operation * * * of a transportation facility that is otherwise authorized by and consistent with” the city’s comprehensive plan and regulations, even if the plan and code include no specific authorization for the city to close the street. It is the “transportation facility” that must be authorized by and consistent with the plan and code, not routine decisions regarding how existing streets will operate. *7th Street Station, LLC v. City of Corvallis*, 58 Or LUBA 93 (2008).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. Once a city has adopted an access management plan (AMP) as part of its transportation system plan (TSP), future city or ODOT actions to implement the projects described in the AMP might qualify as the type of actions that are exempted from LUBA’s review jurisdiction by ORS 197.015(10)(b)(D) because those actions are the kinds of actions described in ORS 197.015(10)(b)(D) and they are “authorized by and consistent with” the city’s TSP. However, where the city has neither adopted the AMP as part of the TSP or established that the projects described in the AMP are “authorized by and consistent with” the city’s TSP, a city decision to approve the AMP is not exempted from LUBA’s review jurisdiction by ORS 197.015(10)(b)(D). *Rhodes v. City of Talent*, 47 Or LUBA 574 (2004).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. 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).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. Where a city imposes conditions of approval requiring external street improvements as part of a land use decision approving a conditional use permit, the aspects of the decision requiring external street improvements are not subject to the exception to the definition of land use decision at ORS 197.015(10)(b)(D), notwithstanding that if the required improvements were imposed in a separate decision not involving conditional use approval, those improvements might fit within the exception. *Terra v. City of Newport*, 36 Or LUBA 582 (1999).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. Decisions which would otherwise be statutory land use decisions, but which involve the design, construction, operation, maintenance or repair of roads, are exempt from the statutory

definition of land use decision and, therefore, not subject to LUBA's jurisdiction. *Leathers v. Washington County*, 31 Or LUBA 43 (1996).

26.2.9 LUBA Jurisdiction – Land Use Decision: Statutory Test – Transportation Facility Exception. Local government decisions granting design review approval for segments of a light rail transit (LRT) line which do not approve final *engineering* design or construction of the LRT facility are not within the exception to the definition of “land use decision” established by ORS 197.015(10)(b)(D). *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).