

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a Hillsboro School District
4 (District) decision that alters school attendance area
5 boundaries.

6 **FACTS**

7 Following the construction of a new high school within
8 its boundaries and the 1995 legislature's enactment of
9 school unification legislation, the District's board of
10 directors (board) evaluated the attendance areas of the
11 various schools within the district and allocated students
12 accordingly.

13 The board appointed an attendance boundary committee
14 (committee) in December, 1995, which gathered, studied and
15 held hearings on information related to the allocation of
16 students among the schools. On November 19, 1996, the board
17 adopted the committee's revised recommended attendance areas
18 for the District's 27 schools, and designated the new
19 attendance areas within the existing District boundaries.
20 This appeal followed.

21 **MOTION TO DISMISS**

22 The District moves to dismiss on the ground that the
23 challenged decision is neither a statutory land use decision
24 nor a significant impact land use decision subject to our

1 jurisdiction.¹ The District contends that its decision
2 falls within the board's plenary power under ORS 332.072,
3 which provides that "the district school boards have control
4 of the district schools and are responsible for educating
5 children residing in the district."

6 Petitioner contends that the board's determination of
7 attendance areas is subject to LUBA review as either a
8 statutory or significant impact land use decision. As the
9 party seeking LUBA review, the burden is on petitioner to
10 establish that the appealed decision is a land use decision.
11 Billington v. Polk County, 299 Or 471, 475, 703 P2d 232
12 (1985); Ramsey v. City of Portland, 30 Or LUBA 212 (1995);
13 City of Portland v. Multnomah County, 19 Or LUBA 468, 471
14 (1990); Portland Oil Service Co. v. City of Beaverton, 16
15 Or LUBA 255, 260 (1987).

16 **A. Statutory Test**

17 Petitioner relies on ORS 195.020(1) and
18 197.015(10)(a)(A)(i) to support her contention that the
19 challenged decision is a land use decision. ORS
20 197.015(10)(a)(A) sets forth the statutory definition of
21 "land use decision".² ORS 195.020(1) imposes on special

¹The District's request for oral argument on its motion is denied.

²Subject to exceptions that are not pertinent here, ORS 197.015 (10)(a)(A) states that a land use decision includes:

1 districts the duty to comply with Statewide Planning Goals
2 when it exercises a land use planning function.³

3 The school district relies on J.C. Reeves Corp. v.
4 Sherwood Education Dist. 88J, 26 Or LUBA 220 (1993), aff'd
5 126 Or App 578 (1994) and Westside Neighborhood v. School
6 District 4J, 58 Or App 154, 161, 647 P2d 962 (1982), rev den
7 294 Or 78 (1982) to support its motion to dismiss. In J.C.
8 Reeves, we held that a school district's decision not to
9 adjust its attendance boundaries was not an exercise of land
10 use planning power by the school district, under ORS
11 197.015(10)(b).

12 Petitioner argues that because the decision in J.C.
13 Reeves was one that maintained the status quo, the facts in
14 that case are distinct from those in the present case,
15 making J.C. Reeves inapplicable as precedent. We understand

"A final decision or determination made by a local government
or special district that concerns the adoption, amendment or
application of:

- "(i) The Goals;
- "(ii) A comprehensive plan provision;
- "(iii) A new land use regulation;
- "(iv) A new land use regulation[.]"

³ORS 195.020(1) provides:

"Special districts shall exercise their planning duties, powers
and responsibilities and take actions that are authorized by
law with respect to programs affecting land use, including a
city or special district boundary change as defined in ORS
197.175 (1), in accordance with goals approved pursuant to ORS
chapters 195, 196 and 197."

1 petitioner's position to be that the same decision with a
2 different outcome changes the character of the decision
3 itself. We disagree. The outcome of a board decision to
4 change or not change attendance area boundaries does not
5 determine if the decision is a land use decision.

6 In Westside Neighborhood v. School District 4J, 58 Or
7 App at 161, the court held that a district's decision to
8 close a school is not a land use decision, stating:

9 "many kinds of governmental actions can have an
10 impact on land use, but that does not make every
11 governmental action an land use action. * * * That
12 decision [to close a school] was an exercise of
13 the school board's responsibility for educational
14 policy and basic district management. Whatever
15 secondary effects the closure of the school might
16 have on land use, the closure decision was not a
17 'land use decision.'" (Emphasis in original.)

18 In 1993, the legislature enacted ORS 197.015(10)(c),
19 specifically excluding a decision by a school district to
20 close a school from the statutory definition of a land use
21 decision.

22 In the present case, the challenged decision arose as a
23 result of the board's decision to change attendance area
24 boundaries. A school board decision to change attendance
25 area boundaries has impacts similar to the impacts from a
26 decision to close a school. The result in both cases is
27 that some students must change schools. Either decision may
28 result in collateral transportation impacts. Nevertheless,
29 for the reasons stated in Westside in conjunction with
30 school closure, a school district's decision to change the

1 attendance area boundaries within its district boundaries
2 does not constitute a statutory land use decision for
3 purposes of ORS 197.015 (10)(a)(i).⁴

4 **B. Significant Impact Test**

5 Petitioner also argues that the District's decision is
6 a significant impact land use decision. See City of
7 Pendleton v. Kerns, 294 Or 126, 133, 653 P2d 992 (1982). As
8 the Oregon Supreme Court in Kerns acknowledged, the
9 significant impact standard is nebulous. Id. at 133. As
10 elaborated in subsequent case law, to establish that a
11 decision is a significant impact land use decision, the
12 burden is on petitioner to establish both (1) a demonstrated
13 relationship between the challenged decision and expected
14 impacts; and (2) evidence demonstrating that the expected
15 impacts are likely to occur as a result of the decision.
16 Keating v. Heceta Water District, 24 Or LUBA 175, 181-82
17 (1992); Anderson Bros. v. City of Portland, 18 Or LUBA 462,
18 471 (1989). The expected impacts cannot be simply
19 speculative. Carlson v. City of Dunes City, 28 Or LUBA 411,
20 414 (1994).

21 Petitioner asserts that the board's decision setting
22 attendance areas satisfies the significant impact test

⁴Petitioner also argues that the school district is a high growth district and thus subject to the school facility planning process set forth in ORS 195.110. ORS 195.110 neither addresses operational standards for schools generally nor restricts a district's authority to set attendance area boundaries.

1 because it will have a substantial negative impact on
2 traffic, transportation, safety and energy use. Petitioner
3 offers four record entries in support of her position.
4 These entries refer to letters submitted by residents who
5 opposed the challenged decision. The letters each speak
6 generally to the negative impacts that the opponents and
7 their children, who are all students at an affected school
8 within the district, would experience as a direct result of
9 the challenged decision.

10 To satisfy the significant impact test, it is not
11 enough that a decision may potentially have some impact on
12 present or future land use in the area. J.C. Reeves Corp.
13 v. Sherwood Educational Dist. 88J, 26 Or LUBA at 225; Many
14 Rivers Group v. City of Eugene, 25 OR LUBA 518 (1993);
15 Keating v. Heceta Water District, 24 Or LUBA at 181-82;
16 Miller v. City of Dayton, 22 Or LUBA 661, aff'd 113 Or App
17 300 (1992); Citizens For Better Transit v. Metro Service
18 Dist., 15 Or LUBA 482 (1987). Petitioner must prove that
19 the alleged negative impact on land use is (a) likely to
20 occur; (b) proximately linked to the decision; and (c)
21 quantitatively or qualitatively significant. Anderson
22 Bros., Inc. v. City of Portland, 18 Or LUBA 462 (1989).

23 Traffic impact has been found to satisfy the
24 significant impact test in some cases. See, e.g., Leathers
25 v. Washington County, 29 Or LUBA 343 (1995), Citizens for
26 Better Transit v. Metropolitan Service Dist., 15 Or LUBA 623

1 (1987). In Leathers, this Board held that a decision that
2 resulted in an increase of 300 cars per day at a particular
3 intersection was one that created a significant impact.
4 Leathers, 29 Or LUBA at 349. In so holding, LUBA recognized
5 the long-established community use of the affected street
6 and the drastic departure from that use that the county's
7 decision represented as elements contributing to the
8 significance of the impact. Id. at 348. In the present
9 case, petitioner alleges only that a negative impact will
10 result relative to transportation, and then submits letters
11 which narrate the various hardships that certain other
12 persons allege they will endure. The letters and
13 petitioner's argument are inadequate to establish that the
14 board's attendance area decision will result in an impact on
15 land use that is significant.

16 The letters on which petitioner relies relate many
17 possible negative impacts that could possibly result from
18 the decision. Most of these alleged impacts are unrelated
19 to land use, and those that are all relate to an increased
20 travel distance from home to school for petitioner and those
21 similarly situated. Although these letters allege that the
22 impact on land use is both likely to occur and proximately
23 linked to the decision, they are inadequate to establish
24 that the impact of the board's decision on the present and
25 future use of land in the area will be either quantitatively
26 or qualitatively significant.

1 Petitioner has failed to meet its burden of showing
2 that a decision on attendance boundaries is a land use
3 decision. The District's motion to dismiss is granted.

4 This appeal is dismissed.