

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impacts Test.** A state agency SAC program’s identification of “activities” that “significantly affect land use” for purposes of the SAC program does not relate to or answer the jurisdictional question of whether LUBA has jurisdiction over a decision because the decision creates “actual, qualitatively or quantitatively significant impact on present or future land uses” under the “significant impacts” test articulated in *Peterson v. City of Klamath Falls*, 279 Or 249, 566 P2d 1193 (1977). *Schaefer v. OAB*, 81 Or LUBA 819 (2020).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impacts Test.** A contract between a local government and an engineering firm for the design of three bridges does not qualify as a “significant impacts” land use decision where the contract authorizes only design work and consulting services and does not authorize the use or development of land. *Van Dyke v. Yamhill County*, 80 Or LUBA 403 (2019).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impacts Test.** LUBA will only exercise its jurisdiction under the judicially created significant impacts test if the petitioner identifies non-land-use standards that apply to the decision and would govern LUBA’s review, and that have some relationship to the use of land. *Van Dyke v. Yamhill County*, 80 Or LUBA 403 (2019).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impacts Test.** 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).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** When a city adopts an ordinance prohibiting marijuana businesses in the city pursuant to ORS 475B.968(1), the city’s decision is not a significant impacts land use decision because any provisions of ORS 475B.968 that arguably could contain what would qualify as standards have no bearing on or relationship to the use of land or to the city’s planning and zoning responsibilities. *Caudle v. City of Dunes City*, 77 Or LUBA 230 (2018).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impacts Test.** Where the legislature excludes certain decisions from the statutory definition of “land use decision,” LUBA has no review authority over such decisions under the significant impact test. Similarly, where no party challenges the statutory authority of the Land Conservation and Development Commission (LCDC) to adopt an administrative rule that excludes a decision extending a permit on farm or forest land from LUBA’s jurisdiction, and LUBA applies the rule to conclude that the extension decision is excluded from LUBA’s jurisdiction, LUBA will not consider whether the “significant impacts test” is met. *McLaughlin v. Douglas County*, 76 Or LUBA 77 (2017).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** In order to qualify as a “significant impacts” land use decision, the decision must significantly change the land use status quo with respect to present or future uses of land. Where a decision at best simply preserves the

land use status quo, the decision is not a significant impacts land use decision. *McLoughlin Neighborhood Association v. City of Oregon City*, 73 Or LUBA 82 (2016).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impacts Test.** LUBA will decline to apply the “significant impact” land use decision test to a city’s operational or property management decisions that have the effect of restricting public access and use of public lands, when those decisions have little or nothing to do with land use planning or regulation. In order to successfully establish LUBA’s jurisdiction under the significant impact test, petitioner must identify statutory or other standards or laws that would govern LUBA’s review, and show that such standards have some bearing on or relationship to the use of land. *Northwest Trail Alliance v. City of Portland*, 71 Or LUBA 339 (2015).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** LUBA will decline to apply the “significant impact” land use decision test to allow the Board to review building permit decisions that merely implement earlier statutory land use decisions, even if the building permit decisions are the proximate step leading to actual construction and other actions affecting land use, and even if some of the earlier statutory land use decisions were remanded by LUBA and still before the local government. Extending the significant impacts test to allow LUBA’s review over such building permits would represent an end run around the statutory scheme for reviewing land use decisions. *Willamette Oaks LLC v. City of Eugene*, 68 Or LUBA 162 (2013).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** To constitute a “significant impacts” land use decision, the decision must be a “final” decision. The adoption of a master plan that consists entirely of recommendations and guidelines that can have no land use impacts at all until implemented in subsequent land use decisions is not a significant impacts land use decision. *Terra Hydr Inc. v. Metro*, 68 Or LUBA 302 (2013).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** 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).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Repeal of code provisions proscribing certain aircraft operations, such as acrobatics, in the airspace over a city has no significant impacts on present or future uses of land, and is therefore not a significant impact land use decision. *Oregon Aviation Watch v. City of Hillsboro*, 67 Or LUBA 252 (2013).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Repeal of a code provision requiring city council approval of new airports is not a significant impacts land use decision, where the code provision has been entirely superseded by comprehensive planning and zoning governing the approval of new airports within the city. *Oregon Aviation Watch v. City of Hillsboro*, 67 Or LUBA 252 (2013).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** 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 planning department permit will be

the county's final land use decision when the local appeal is final and the board of county commissioners' order is not separately appealable as a significant impacts test land use decision. *Schock v. Jackson County*, 61 Or LUBA 403 (2010).

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

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A decision vacating a 30-foot by 100-foot section of vacant public right-of-way in order to enlarge a single residential lot to the size necessary to construct a single-family dwelling in a developed residential area is not a “significant impacts” land use decision, because there are few or no traffic impacts and the only impact on present or future land uses is to allow a single dwelling consistent with the development on surrounding lots. *Bohnenkamp v. Clackamas County*, 56 Or LUBA 17 (2008).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where an amendment to a development agreement is contingent on future land use approvals, any significant impacts on land uses resulting from the amendment are merely potential and do not satisfy the significant impact test. *ZRZ Realty Company v. City of Portland*, 49 Or LUBA 309 (2005).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A concern that a property line adjustment may facilitate future development of a 33-acre parcel and a 64-acre parcel does not render a decision approving the adjustment a “significant impact” land use decision, where the petitioner fails to demonstrate that the adjustment would allow a different kind or intensity of development, change the land use status quo of the area, or create an actual, qualitatively or quantitatively significant impact on present or future land uses. *Jewett v. City of Bend*, 48 Or LUBA 16 (2004).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A decision that simply removes a contractual impediment to development in an annexation agreement does not in itself approve “development” or otherwise have an actual impact on present or future land uses, and that decision therefore is neither a statutory nor significant impact test land use decision. *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A decision creating a local improvement district to finance a sewer system for a long-established subdivision will not have a significant effect on present or future land uses and, therefore, is not a significant impact land use decision. *Lewis v. City of Bend*, 45 Or LUBA 122 (2003).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** The change in ownership of land that may result from a city decision to commence condemnation of property, in and of itself, will have no impact on present or future land use and does not constitute a significant impacts test land use decision. *Decker v. City of Cornelius*, 45 Or LUBA 539 (2003).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A city decision that permits repair of city reservoirs and installation of temporary covers over those reservoirs will not effect a significant change in the land use status quo of the area, and therefore is not a significant impacts land use decision. *Arlington Heights Neigh. Assn. v. City of Portland*, 45 Or LUBA 559 (2003).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A city’s approval of a reimbursement district is a “fiscal ordinance” and therefore not subject to LUBA’s jurisdiction, regardless of whether petitioners can demonstrate that the decision satisfies the significant impacts test. *Jesinghaus v. City of Grants Pass*, 42 Or LUBA 477 (2002).

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

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** 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).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A decision to acquire by eminent domain a 0.01-acre portion of petitioner’s property to facilitate a previously authorized transportation improvement does not itself have qualitative or quantitative significant impacts on present or future land uses, and is thus not a “significant impacts” land use decision subject to LUBA’s jurisdiction. *Phillips v. City of Hermiston*, 39 Or LUBA 581 (2001).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A decision to vacate approximately one third of a mile of an existing road has an actual, qualitatively or quantitatively significant impact on present or future land use and thus is a significant impact test land use decision, because it alters the existing traffic pattern and access of nearby property owners and sets the stage for further development that will alter the character of surrounding uses. *Mekkers v. Yamhill County*, 38 Or LUBA 928 (2000).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** City legislation that may, when applied, result in an uncompensated taking of property does not, by itself, result in a significant impact on land use. *Baker v. City of Woodburn*, 37 Or LUBA 563 (2000).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** An increase in the cost of development does not necessarily constitute a significant impact on land use. *Baker v. City of Woodburn*, 37 Or LUBA 563 (2000).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A resolution of nonbinding support for the siting of a tribal casino within city limits is not a land use decision

under the significant impacts test because, by itself, it does not have an impact, significant or otherwise, on present or future uses of land. *Kelley v. City of Cascade Locks*, 37 Or LUBA 80 (1999).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** The focus of the significant impact test is on impacts to land use, not economic or property interest. Where alleged economic harm from a revocable permit to close streets does not relate to land uses in the area, the challenged decision is not a significant impact test land use decision. *Hashem v. City of Portland*, 34 Or LUBA 629 (1998).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where identified impacts do not extend to any other nearby property and have only minimal impacts on land uses on the subject property, the significant impact test is not met. *Hashem v. City of Portland*, 34 Or LUBA 629 (1998).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** The impact of a revocable permit to close streets is speculative and, for that reason, is not significant where any actual loss of access caused by a revocable permit would not occur for at least three years, and might not occur then if an existing lease is renewed or if the permit is revoked in the event the lease is not renewed. *Hashem v. City of Portland*, 34 Or LUBA 629 (1998).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where LUBA determines a challenged decision is not a land use decision or limited land use decision and petitioner has filed a conditional motion to transfer as provided by OAR 661-010-0075(11)(c), the appeal will be transferred to circuit court. *Hashem v. City of Portland*, 34 Or LUBA 629 (1998).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** The land use impact of a school district's decision to adjust attendance area boundaries is not so quantitatively or qualitatively significant as to constitute a land use decision, where the identified impacts are either unrelated to land use or involve only increased travel distances to school. *Butts v. Hillsboro School District*, 33 Or LUBA 211 (1997).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** The city's sale of a portion of a city-owned lot which does not involve any public right-of-way and does not alter any existing traffic patterns of nearby property owners with access rights, does not amount to a street vacation that will have a significant impact on present or future land uses in the area. *Thierolf v. City of Ashland*, 32 Or LUBA 182 (1996).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where the city's sale of a portion of a lot to intervenor facilitates a subsequent partition of intervenor's property, the subsequent partition does not transform the lot conveyance into a significant impact land use decision. *Thierolf v. City of Ashland*, 32 Or LUBA 182 (1996).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** The significant impact test does not apply to land use decisions specifically excluded by statute from LUBA's jurisdiction. *Friends of Eugene v. City of Eugene*, 32 Or LUBA 161 (1996).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** When a local decision is statutorily exempt from review, that the decision may significantly impact land uses does not make it a land use decision subject to LUBA’s review. *Leathers v. Washington County*, 31 Or LUBA 43 (1996).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where a challenged decision authorizes improvements to a public right-of-way which will significantly alter the long-established character of the area, in that they will change not only the physical attributes of the subject property but also the traffic patterns of the surrounding neighborhoods, these actual impacts are sufficient to make the decision a significant impact test land use decision. *Leathers v. Washington County*, 29 Or LUBA 343 (1995).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where petitioners fail to establish that a city decision assuming jurisdiction over and maintenance responsibility for a developed street in the downtown area will have a significant impact on present or future land uses, the decision does not satisfy the significant impact test for a land use decision. *Anderson v. City of Gates*, 29 Or LUBA 321 (1995).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** To qualify as a significant impact test land use decision, the decision must create an actual, qualitatively or quantitatively significant impact on present or future land uses and the expected impacts must be likely as a result of the decision, and not speculative. *Carlson v. City of Dines City*, 28 Or LUBA 411 (1994).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A decision to pave a 230-foot right-of-way segment is a significant impact test land use decision, because it authorizes paving an area used as a public recreational area and changes the character of that area by opening up a dead-end street and converting the dead-end street into a public thoroughfare. *Carlson v. City of Dines City*, 28 Or LUBA 411 (1994).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** An agreement between a local government and third parties implementing a different local decision to develop an unimproved section of a road, does not concern the adoption, amendment or application of the goals, a land use regulation or a comprehensive plan, and does not of itself have significant impacts on present or future land uses. *Carlson v. City of Dines City*, 28 Or LUBA 411 (1994).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** 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).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where petitioners do not explain why the installation of sand filter tanks, as part of a proposed new sewage treatment system designed to remedy past problems, will have significant impacts on petitioners’ use of their land, petitioners fail to demonstrate that the challenged permit allowing installation of sand filter

tanks satisfies the significant impact test. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** As the party seeking review by LUBA, petitioner has the burden of establishing that the challenged decision satisfies the significant impact test for a “land use decision.” Petitioner must establish there is (1) a relationship between the decision and the projected impacts, and (2) evidence demonstrating that the projected impacts are likely to occur as a result of the decision. *Fraser v. City of Joseph*, 28 Or LUBA 217 (1994).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where property outside city limits is planned and zoned for residential use under the acknowledged county plan and regulations, and a prior county decision approves subdivision of the property for residential development, a city decision to provide city sewer and water services to the property, for the approved residential use, does not satisfy the significant impact test. *Fraser v. City of Joseph*, 28 Or LUBA 217 (1994).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A county order that simply restates a decision made in an earlier order and corrects a citation in the earlier order is not a land use decision, because it does not concern the adoption, amendment or application of the goals, local comprehensive plan or local code, or have a significant impact on land use. *Sahagian v. Columbia County*, 27 Or LUBA 341 (1994).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where the challenged decision simply refuses to change school district boundaries, and petitioner does not demonstrate that any of the impacts it alleges will result from the decision are likely to occur, the challenged decision is not a significant impact test land use decision. *J.C. Reeves Corp. v. Sherwood Education Dist. 88J*, 26 Or LUBA 220 (1993).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where the challenged decision is an intergovernmental agreement, the effects of which on land use are speculative only, the decision is not a significant impact test land use decision. *Many Rivers Group v. City of Eugene*, 25 Or LUBA 518 (1993).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where petitioner does not contend a challenged decision is a land use decision under the significant impact test and, based on the parties’ submittals, it is not obvious to LUBA that it is, LUBA will conclude the challenged decision does not satisfy the significant impact test for a “land use decision.” *Price v. Clatsop County*, 25 Or LUBA 341 (1993).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Absent an explanation from petitioner concerning why a decision that simply determines certain property is in violation of the local government fire code is a significant impact test land use decision, the decision is not a significant impact land use decision. *Curtis Serve N Save v. City of Eugene*, 24 Or LUBA 341 (1992).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A water district decision authorizing the provision of domestic water service to property designated and zoned for residential use by an acknowledged county plan and land use regulations is not a “significant impact test” land use decision. *Keating v. Heceta Water District*, 24 Or LUBA 175 (1992).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** In order to qualify as a significant impact land use decision, the appealed decision must be final. *City of North Plains v. Washington County*, 24 Or LUBA 78 (1992).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** That a city decision to expand a basketball court in a city park might *potentially* cause *some* impact to surrounding mature fir trees or to the historic character of the park, does not demonstrate the decision will cause “a significant impact on present or future land uses in the area,” as is required by the significant impact test. *Miller v. City of Dayton*, 22 Or LUBA 661 (1992).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Even if a local government decision does not satisfy the statutory definition of “land use decision,” it may nevertheless be a land use decision subject to LUBA review if it will have a “significant impact on present or future land uses in the area.” *City of Pendleton v. Kerns*, 294 Or 126, 133-134, 653 P2d 996 (1982). *City of Portland v. Multnomah County*, 19 Or LUBA 468 (1990).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where the formation of a People’s Utility District (P.U.D.) is for the purpose of providing water service to the same developed area where water service is currently provided by an existing domestic water supply district distribution system, the only significant effect of the creation of the P.U.D., and its potential acquisition of the assets of the water district, is on the manner in which a city wanting to annex and withdraw from the water district territory in the subject area may obtain ownership of the water distribution facilities in that area, not on the present or future uses of land in the area. *City of Portland v. Multnomah County*, 19 Or LUBA 468 (1990).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** The alternative “significant impact test” for identifying land use decisions subject to LUBA review does not apply to decisions which are specifically excluded from the statutory definition of “land use decision” under ORS 197.015(10)(b). *Parmenter v. Wallowa County*, 19 Or LUBA 271 (1990).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** A county order selecting a preferred alternative site for a new bridge and directing staff to file necessary land use applications could potentially lead to a significant impact on land use, *if* the authorized applications result in county decisions approving construction of a new bridge. However, a decision which has only potential impacts on land use does not satisfy the significant impact test. *McKenzie River Guides Assoc. v. Lane County*, 19 Or LUBA 207 (1990).

**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** Where a statute specifically excludes certain decisions from the statutory definition of “land use decision” and vests review jurisdiction in another tribunal, LUBA has no review authority over such decisions under the significant impact test. *Oregonians in Action V. LCDC*, 19 Or LUBA 107 (1990).



**26.3 LUBA Jurisdiction – Land Use Decision: Significant Impact Test.** No purpose would be served by recognizing county approval of a final plat for a subdivision within city limits for recording as a “significant impact” test land use decision, when the same impacts are inherent in one or more city approvals which are statutory land use decisions. *Elliott v. Lane County*, 18 Or LUBA 871 (1990).