

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

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49. A decision that approves the adjustment of a property line between two existing parcels that were previously created by partition authorized by a Ballot Measure 49 DLCD Final Order is not a decision “under” Section 11 of Measure 49, because the county did not review the property line adjustment application under the authority of Section 11. Rather, it reviewed the application under the county zoning ordinance criteria applicable to property line adjustments. *Friends of Yamhill County v. Yamhill County*, 74 Or LUBA 268 (2016).

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49. Under Section 5(3) of Ballot Measure 49 (2007), a property owner may complete construction of a use that was authorized under a previously issued Ballot Measure 37 (2004) waiver, if the property owner can establish that he or she has a common law vested right to complete construction of a use that was authorized under a Ballot Measure 37 waiver. Under ORS 195.318(1), LUBA would likely not have jurisdiction to review a vested right determination under Subsection 5(3) of Measure 49, however, where the property owner claims to have a vested right based on a previously issued building permit, not a Ballot Measure 37 waiver, LUBA has review jurisdiction over a county decision that the property owner does not have a vested right under the building permit. *Crosley v. Columbia County*, 65 Or LUBA 164 (2012).

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49. Section 11 of Measure 49 requires local governments to apply both local and statutory standards that govern approvals of subdivisions, partitions and development applications based on Measure 49 homesite approvals, including a statutory requirement to cluster development. A decision that applies the standards set out in Section 11 is a decision “under” Section 11 for purposes of the jurisdictional exclusion in Section 16 of Measure 49, ORS 195.318(1), which provides that a determination “under” sections 5 to 11 of Measure 49 is not a land use decision. *Maguire v. Clackamas County*, 64 Or LUBA 288 (2011).

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49 (ORS 195.300 to 195.336). Under the Court of Appeals’ decision in *Pete’s Mountain Homeowners Assn. v. Clackamas Cty.*, 227 Or App 140, 204 P3d 802, *rev den*, 346 Or 589, 214 P3d 821 (2009), where an application for subdivision relies on Ballot Measure 37 waivers, those waivers qualify as “standards and criteria” under the ORS 215.427(3)(a) goal-post statute, and the subdivision application is not subject to subsequently enacted standards and criteria. But Ballot Measure 49, which post-dates Ballot Measure 37 and is inconsistent with the ORS 215.427(3)(a) goal-post statute overrides the goal-post statute and limits the Ballot Measure 37 subdivision applicant to one of the three remedies specified in Ballot Measure 49. *Hoffman v. Jefferson County*, 60 Or LUBA 101 (2009).

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49 (ORS 195.300 to 195.336). Decisions under Measure 49 are not land use decisions and are not subject to LUBA’s jurisdiction. ORS 195.305(7); 195.318(1). *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49 (ORS 195.300 to 195.336). Under ORS 195.305(7) local government decisions about the “nature and extent” of just compensation due under Ballot Measure 49 are not land use decisions. However, a local government decision maker’s *understanding* that approval of a preliminary plat was a decision about the “nature and extent” of just compensation under Measure 49 has no bearing on whether the decision actually is a decision about the “nature and extent” of just compensation under Measure 49. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49 (ORS 195.300 to 195.336). A preliminary subdivision plat approval decision that post-dates a vested rights determination under Measure 49 is a land use decision subject to LUBA’s review and is not a decision concerning the “nature and extent of [just] compensation” under Measure 49. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

26.11 LUBA Jurisdiction – Effect of Ballot Measure 49 (ORS 195.300 to 195.336). In an appeal of a subdivision decision that relies on Ballot Measure 37 waivers and a Ballot Measure 49 vested rights decision, LUBA’s scope of review includes resolving questions about the scope of the previously issued Ballot Measure 37 waiver. A decision about the scope of a previously issued Ballot Measure 37 waiver is not a decision about the “nature and extent of [just] compensation” under Measure 49 (ORS 195.305(7)) and is therefore subject to LUBA review. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).