

26.2.11 LUBA Jurisdiction – Land Use Decision: Statutory Test – Zoning Classification Decisions. A zone verification is not a statutory land use “permit” as defined at ORS 227.160(2)(b), and the city is not required to provide notice of the decision or opportunity for a local appeal of the decision. However, a zone verification decision is subject to LUBA review and a 21-day appeal period. ORS 227.175(11); ORS 197.830(5)(b). *Leyden v. City of Eugene*, 79 Or LUBA 151 (2019).

26.2.11 LUBA Jurisdiction – Land Use Decision: Statutory Test – Zoning Classification Decisions. When a hearings officer makes a zone classification decision, such as a Zone Verification, the Zone Verification is a final land use decision. Thus, such decisions are appealable to LUBA “in the same manner as a limited land use decision.” ORS 227.175(11)(b); ORS 197.830(5). LUBA has exclusive jurisdiction to review land use decisions and limited land use decisions. ORS 197.825. The fact that a zone verification is not a statutory permit removes certain procedural requirements that apply to statutory permits, such as notice and the opportunity for a hearing. However, the fact that a zone verification is not a statutory permit does not mean that a zone verification is not a final land use decision for purposes of LUBA review, including the general prohibition on collateral attack. *Richardi v. City of Eugene*, 78 Or LUBA 299 (2018).

26.2.11 LUBA Jurisdiction – Land Use Decision: Statutory Test – Zoning Classification Decisions. Where in evaluating petitioner’s zone verification request pursuant to Eugene Code (EC) 9.2741(2), the city failed to consider the ORS 197.312(5) requirement that all accessory dwellings must be allowed “subject to reasonable local regulations relating to siting and design,” the proper remedy is for LUBA to remand the decision to the city for the city to consider in the first instance whether EC 9.2741(2) is a “reasonable local regulation[] relating to siting and design” pursuant to ORS 197.312(5). *Kamps-Hughes v. City of Eugene*, 78 Or LUBA 457 (2018).

26.2.11 LUBA Jurisdiction – Land Use Decision: Statutory Test – Zoning Classification Decisions. A zoning classification decision described in ORS 227.160(2)(b) is not limited to “ministerial” decisions that do not require interpretation or the exercise of legal judgment; indeed zoning classification decisions often involve interpretation and the exercise of legal judgment. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

26.2.11 LUBA Jurisdiction – Land Use Decision: Statutory Test – Zoning Classification Decisions. LUBA will reject an argument that a building permit approval is a “permit” as defined at ORS 227.160(2) (discretionary approval of the development of land), where all arguably discretionary determinations regarding the nature and categorization of the proposed use were previously resolved in an unappealed zoning classification decision, and the building permit decision on appeal simply relied on the zoning classification decision. *McCullough v. City of Eugene*, 74 Or LUBA 573 (2016).

26.2.11 LUBA Jurisdiction – Land Use Decision: Statutory Test – Zoning Classification Decisions. Where an applicant obtains from the city a zoning classification decision concluding that a specific type of housing development is an allowed use, but noting that if the use is changed to provide services to persons other than residents of the development, the development must be approved as a conditional use, and the applicant thereafter seeks and the city approves building permits based on the same specific housing development proposed in the zoning classification

decision, the city is not required to impose conditions to preclude the applicant from changing the use to one that requires conditional use approval. *McCullough v. City of Eugene*, 74 Or LUBA 573 (2016).

26.2.11 LUBA Jurisdiction – Land Use Decision: Statutory Test – Zoning Classification Decisions. Where a city issues a zoning classification decision concluding that a probation office for residents of an apartment building is an accessory use to the permitted residential use if the office serves only the residents, a building permit approval for the use proposed in the zoning classification decision does not involve standards that require interpretation or the exercise of legal discretion for purposes of the exclusions to LUBA’s jurisdiction at ORS 197.015(10)(b)(A) or (B), because all interpretation and exercise of legal judgment regarding the nature of the proposed use was accomplished in the unappealed zoning classification decision. *McCullough v. City of Eugene*, 74 Or LUBA 620 (2016).

26.2.11 LUBA Jurisdiction – Land Use Decision: Statutory Test – Zoning Classification Decisions. A city’s failure to enter a zoning classification decision into a registry as required by ORS 227.175(11)(a) does not make the decision something other than a zoning classification decision. *Mariposa Townhouses v. City of Medford*, 68 Or LUBA 479 (2013).