

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** Where a county approves a petitioner’s application subject to a condition of approval, where the approval requires that the condition be met prior to the expiration of the approval period, where county counsel subsequently sends the petitioner a letter concluding that the petitioner had not satisfied the condition and, thus, that the approval had expired, and where the petitioner does not assert that the letter involves the application of land use regulations or identify any land use regulation that county counsel applied or should have applied, LUBA will conclude that the letter is not a “land use decision,” as defined in ORS 197.015(10)(a)(A), and that LUBA lacks jurisdiction to review it. *Schofield v. Douglas County*, 81 Or LUBA 143 (2020).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A contract between a local government and an engineering firm for the design of three bridges does not concern the application of any land use regulation, and, thus, is not a “land use decision,” where the contract authorizes only design work and consulting services, where the contract does not authorize the use or development of land, and where the design and consulting services concern development actions that must be (and in fact were) authorized by other land use decisions. *Van Dyke v. Yamhill County*, 80 Or LUBA 403 (2019).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** LUBA’s jurisdiction over Metro decisions is complicated, because Metro does not have a comprehensive plan, and its ordinances are not “land use regulation[s].” As a result, a Metro decision fits within the ORS 197.015(10)(a)(A) definition of a “land use decision” only if the decision (1) adopts or amends Metro’s Regional Framework Plan; or (2) otherwise concerns the application of the statewide planning goals. *Watts v. Metro*, 78 Or LUBA 429 (2018).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** To qualify as a “land use decision” as defined at ORS 197.015(10)(a)(A)(i), a Metro Resolution must constitute a “final decision” that concerns the application of the statewide planning goals. However, finality for purposes of ORS 197.015(10)(a) is not solely a matter of whether the decision constitutes a local government’s last word on a land use issue. Other important considerations include whether the decision is an exercise of the local government’s land use planning authority, and the extent to which the decision is binding on the local government and affected parties. *Watts v. Metro*, 78 Or LUBA 429 (2018).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A decision by Metro acting as arbitrator does not constitute a “final decision,” where Metro’s role as arbitrator was not an exercise of its function as a local government at all, but rather where Metro acted as a chosen arbitrator, a function that could have been performed by a private entity or individual. *Watts v. Metro*, 78 Or LUBA 429 (2018).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A Metro arbitration decision subject to an arbitration process devised by Metro that contemplates that the final decision the comprehensive plan designation of an area of land shared by two cities and a county will be determined in the post-acknowledgement plan amendments (PAPA) adopted by the cities and county is not itself a “final” “land use decision.” *Watts v. Metro*, 78 Or LUBA 429 (2018).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A Metro arbitration decision issued pursuant to a Metro arbitration process to arrive at a solution for the comprehensive plan designation for a disputed area of land jointly owned by two cities and a county, and which contemplates that the final decision regarding the comprehensive plan designation of the area will occur during the post-acknowledgment plan amendments, is not a “zoning” decision for purposes of ORS 268.393(6), which is part of the statute implementing Ballot Measure 56. *Watts v. Metro*, 78 Or LUBA 429 (2018).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** 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).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** Where a building permit is issued without applying any land use regulations, and a prior design review decision either applied or should have applied all applicable land use standards, the building permit is not a land use decision that is appealable to LUBA. *Glenwood 2006, LLC v. City of Beaverton*, 76 Or LUBA 160 (2017).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** Because Metro does not have a comprehensive plan or land use regulations, a Metro decision is a statutory land use decision subject to LUBA’s review only if the decision (1) adopts or amends the Metro Regional Framework Plan or one of its components, or (2) otherwise constitutes a Metro decision that concerns the application of the statewide planning goals. *Terra Hydr Inc. v. Metro*, 68 Or LUBA 302 (2013).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** The Metro Council’s adoption by resolution of a master plan for a regional park does not constitute the adoption or amendment of a functional plan, where the master plan consists entirely of non-binding recommendations and guidelines to local governments, and nothing in Metro’s legislation or elsewhere requires such a master plan to be adopted as a functional plan or amendment to a functional plan. *Terra Hydr Inc. v. Metro*, 68 Or LUBA 302 (2013).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A county’s certification in a state agency land use compatibility statement that the activities proposed in the related state agency permit application are consistent with all local land use requirements is necessarily a land use decision, as defined in ORS 197.015(11)(a), if it is a final decision and not subject to any of the exceptions set out at ORS 197.015(11)(b). *Wolfgram v. Douglas County*, 52 Or LUBA 536 (2006).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** Where a Metro Committee would be required to apply land use standards to approve a city annexation ordinance on appeal, its decision to deny the annexation ordinance is a

land use decision subject to review to LUBA, notwithstanding that the denial was based on non-land use standards. *City of Damascus v. Metro*, 51 Or LUBA 210 (2006).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District.** Although a private conservation group’s decision to purchase land could not be a land use decision reviewable by LUBA, since under ORS 197.015(10)(a) land use decisions must be governmental decisions, a city’s decision to purchase land might be a land use decision if it otherwise qualifies under the definition of land use decision set out at ORS 197.015(10)(a). *Willamette Oaks, LLC v. City of Eugene*, 46 Or LUBA 813 (2004).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A decision by a parks commission to construct a driving range within a city owned golf course is not a land use decision subject to LUBA review because the decision is not made by a local government or special district. *Davis v. City of Ashland*, 37 Or LUBA 224 (1999).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A school district’s decision to adjust attendance area boundaries is not a statutory land use decision. *Butts v. Hillsboro School District*, 33 Or LUBA 211 (1997).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A pre-annexation agreement which does not purport to and does not effect approval of a proposed development or annexation of property into the city is not a final land use decision over which LUBA has jurisdiction. *Crist v. City of Beaverton*, 31 Or LUBA 202 (1996).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** ORS 195.020(1) does not give a special district land use planning responsibilities. Rather, it limits a special district’s exercise of its land use planning responsibilities if, in fact, the special district has been given such responsibilities by other legal authority. *Churchill v. Neahkahnne Water District*, 29 Or LUBA 354 (1995).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** Where LUBA has affirmed a special district’s decision repealing its water allocation program, the district’s decision authorizing the provision of domestic water service to property designated and zoned for residential use under an acknowledged county plan and regulations is not a land use decision subject to LUBA review. *Churchill v. Neahkahnne Water District*, 29 Or LUBA 354 (1995).

**26.2.3 LUBA Jurisdiction – Land Use Decision: Statutory Test – Local Government/Special District Decision.** A special district’s *repeal* of a program affecting land use, like its adoption or implementation of such a program, is an “action \* \* \* with respect to programs affecting land use” that must be in accordance with the goals pursuant to ORS 195.020(1) and, therefore, is a land use decision subject to review by LUBA. *Churchill v. Neahkahnne Water District*, 27 Or LUBA 721 (1994).