

26.2.3 Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county suspends operation of a verified nonconforming use based on notice of noncompliance with DEQ rules, and subsequently lifts that suspension based on notice that corrective actions have been taken, the county is not required to apply land use regulations relating to the discontinuation of nonconforming uses where those land use regulations apply only in the context of an application for development of a nonconforming use or a code enforcement proceeding. Because the county is not required to apply land use regulations, lifting the suspension is not a “land use decision” for purposes of ORS 197.015(10)(a)(A) and LUBA therefore lacks jurisdiction under ORS 197.825(1). *Campbell v. Columbia County*, 79 Or LUBA 56 (2019).

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).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. An ordinance that amends a county’s comprehensive plan map and zoning maps, in order to implement an earlier decision that adopted findings taking exception to statewide planning goals, is a land use decision as defined at ORS 197.015(10)(a), because it “amends” the county’s comprehensive plan and land use regulations, even if the ordinance itself does not adopt the exceptions or otherwise “apply” any statewide planning goals. *Rogue Advocates v. Josephine County*, 72 Or LUBA 475 (2015).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county adopts an ordinance amending its comprehensive plan map and zoning map, in order to implement an earlier decision that adopted findings taking exceptions to statewide planning goals, it may be that those earlier adopted findings cannot be challenged in the appeal of the ordinance. However, even in that event, that does not mean that LUBA lacks jurisdiction over the ordinance, only that if the petitioner raises no challenges to the ordinance that are within LUBA’s scope of review, LUBA will affirm the ordinance. *Rogue Advocates v. Josephine County*, 72 Or LUBA 475 (2015).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A determination that a condition of land use approval has or has not been complied with generally does not result in a land use decision, unless that determination involves the direct application of a comprehensive plan or land use regulation. *Egge v. Lane County*, 70 Or LUBA 1 (2014).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision that only determines the amount of the financial penalty a landowner must pay for violating a condition of land use approval is not a land use decision, where the only land use regulation that is directly applied states only that the amount of the fine will be determined by application of factors set out in a code provision that is itself not a land use regulation. *Egge v. Lane County*, 70 Or LUBA 1 (2014).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. LUBA has exclusive jurisdiction over a city council decision that amends the city’s Goal 5 inventory of historic resources to remove property, notwithstanding that following the city council decision a circuit court decided a mandamus action in the property owner’s favor based on the stipulation of the parties that the city council had removed the property from the inventory. Because the circuit court judgment did not determine that the property owner was entitled to removal from the inventory under state law, but simply reflected the parties’ stipulation regarding the outcome of the city council’s decision, LUBA’s review of the city council decision cannot conflict with the circuit court judgment. *Lake Oswego Preservation Society v. City of Lake Oswego*, 70 Or LUBA 103 (2014).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A letter from the county’s counsel to the petitioner that merely confirms that the county has accepted, approved and recorded a final subdivision plat and that the board of commissioners cannot revoke the county’s acceptance and recording of the final plat is not a land use decision where the county counsel was not required to and did not apply a comprehensive plan provision or land use regulation in the letter. *Willamette Oaks LLC v. Lane County*, 68 Or LUBA 84 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A building permit decision that does not apply any comprehensive plan and land use regulation is not a statutory “land use decision” defined at ORS 197.015(10)(a), even if the building at issue was initially approved as part of a planned unit development decision that is on remand from LUBA. The remanded decision is not a comprehensive plan or land use regulation for purposes of ORS 197.015(10)(a). *Willamette Oaks LLC v. City of Eugene*, 68 Or LUBA 162 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision can be wrong or erroneous, yet not qualify as a statutory “land use decision” defined at ORS 197.015(10)(a). Even if a local government lacked authority to issue a building permit, or otherwise erred in approving that permit, where the petitioner does not establish that any comprehensive plan provision or land use regulation applied to the building permit, the permit is not within LUBA’s jurisdiction, and any errors committed in issuing the decision can only be challenged in circuit court. *Willamette Oaks LLC v. City of Eugene*, 68 Or LUBA 162 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. 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).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. 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).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Local code provisions that regulate tree cutting and park uses that are not included in the city’s zoning ordinance are not “land use regulations” as defined in ORS 197.015(12). *Lazarus v. City of Milwaukie*, 67 Or LUBA 226 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Regulations that are codified elsewhere than in a local government’s zoning ordinance or similar land use ordinance may nonetheless implement the comprehensive plan and thus constitute “land use regulations” as defined at ORS 197.015(11), if there is a clear connection between the comprehensive plan and the regulation and the inference that the regulation implements the comprehensive plan is unavoidable. *Oregon Aviation Watch v. City of Hillsboro*, 67 Or LUBA 252 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Regulations adopted in 1963 governing aircraft flight operations over a city could not possibly “implement” comprehensive plan policies that were adopted in 1977, and such regulations are therefore not “land use regulations” as defined at ORS 197.015(11). *Oregon Aviation Watch v. City of Hillsboro*, 67 Or LUBA 252 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Regulations proscribing certain aircraft operations over a city are not “clearly connected” to broadly worded comprehensive plan policies that concern environmental protection or the development of a safe transportation system, and such regulations are therefore not “land use regulations” as defined at ORS 197.015(11). *Oregon Aviation Watch v. City of Hillsboro*, 67 Or LUBA 252 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. LUBA may take official notice of a 1984 LCDC acknowledgment order for the purpose of determining whether LCDC reviewed or relied upon a municipal traffic code section to acknowledge the city’s comprehensive plan and land use regulations. That the acknowledgement order does not list or refer to the traffic code section suggests that the traffic code section was not submitted to LCDC for acknowledgment, and neither the city nor LCDC understood the code section to implement a comprehensive plan provision or function as a land use regulation. *Oregon Aviation Watch v. City of Hillsboro*, 67 Or LUBA 252 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A comprehensive plan policy requirement that the city “work” with an existing city airport to reduce airport-related incompatibilities with surrounding land uses is not a mandatory applicable approval standard for legislation that deletes superseded code provisions proscribing certain aircraft flight operations and requiring city council approval of new airports. *Oregon Aviation Watch v. City of Hillsboro*, 67 Or LUBA 252 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county comprehensive plan relies on an intergovernmental agreement between the county and cities to implement plan policies regarding preservation of green corridors, the county’s decision to unilaterally terminate the intergovernmental agreement concerns the application of those comprehensive plan policies, and thus falls within the definition of “land use decision” at ORS 197.015(10)(a). *City of Sandy v. Clackamas County*, 67 Or LUBA 501 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A county’s unilateral termination of an intergovernmental agreement that never became effective might not qualify as a land use decision defined at ORS 197.015(10)(a). However, where the parties dispute and the record does not establish whether or not the agreement was effective, LUBA will not dismiss the appeal on that basis. *City of Sandy v. Clackamas County*, 67 Or LUBA 501 (2013).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a city’s road vacation regulations are codified in the city’s land use code, such regulations are “land use regulations,” and a decision that concerns the application of those regulations falls within the definition of “land use decision” at ORS 197.015(10)(a). *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A reasonable attorney could believe that an enforcement decision that determines that parking of tow trucks is authorized by a previously issued home occupation permit concerns the application of the city’s home occupation regulations, and is thus a land use decision as defined at ORS 197.015(10)(a), because it is frequently unclear whether in making an enforcement decision regarding an existing permit the decision maker applies, or should have applied, a land use regulation. *Noordhoff v. City of North Bend*, 66 Or LUBA 442 (2012).

26.2.4 Land Use Decision: Statutory Test – Goal, Plan, or Land Use Decision. A decision that simply concludes that a condition of permit approval is satisfied or not satisfied, is violated or not violated, is not a land use decision as defined by ORS 197.015(10)(a), because it concerns only the application of a permit condition of approval, not the application of a land use regulation. *Noordhoff v. City of North Bend*, 65 Or LUBA 420 (2012).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A code enforcement decision that determines the location of the floodplain on property falls within the definition of “land use decision” at ORS 197.015(10)(a), where the decision requires application of floodplain maps adopted as part of the county development code, the maps thus qualify as “land use regulations,” and the code enforcement decision therefore concerns the application of a land use regulation. *Bratton v. Washington County*, 65 Or LUBA 461 (2012).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Authorizations signed by city and county officials that authorized an applicant to submit on the city’s and county’s behalf a land use application to construct improvements on city and county owned property are not land use decisions under ORS 197.015(10)(a), where the

authorizations do not apply a land use regulation and the city and county were not required to apply a land use regulation in deciding to sign the authorizations. *Willamette Oaks LLC v. Lane County*, 64 Or LUBA 328 (2011).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Under ORS 92.100(7), a city decision that approves or withholds approval of a final subdivision plat is not a land use decision or limited land use decision and is not reviewable by LUBA. *Calvary Construction v. City of Glendale*, 61 Or LUBA 50 (2010).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A letter from the planning staff to a property owner stating that a land use compatibility statement (LUCS) has expired under its own terms does not “concern” the application of a county’s code enforcement land use regulations, thereby making the decision a land use decision, when the letter does not enforce any conditions or revoke any permit but merely explains what the owner must do to avoid an enforcement action. *VanGrinsven v. Klamath County*, 60 Or LUBA 299 (2010).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. The mere exercise of authority by planning staff to send a letter informing an owner that a permit has expired is insufficient in itself to make the staff action “concern” the application of a land use regulation and therefore a land use decision. Otherwise, every conceivable action taken by county staff under color of authority of its land use code could constitute a land use decision. *VanGrinsven v. Klamath County*, 60 Or LUBA 299 (2010).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county’s adopted right-of-way encroachment license policy was adopted to address public safety concerns with encroachments, rather than to implement any state or local land use policies, a county decision to grant a right-of-way encroachment license is not a land use decision. *Amussen v. Tillamook County*, 58 Or LUBA 431 (2009).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county’s comprehensive plan, transportation system plan and applicable community plan call for roadway design standards and adopt a skinny-streets standard, but do not address right-of-way encroachments, a decision to grant a right-of-way encroachment license does not apply any of those land use standards and is not a land use decision. *Amussen v. Tillamook County*, 58 Or LUBA 431 (2009).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the decision on appeal to LUBA is a hearings officer’s dismissal of a local appeal, not the building permit that was the subject of the local appeal, and the hearings officer clearly applied discretionary land use regulation standards to dismiss the local appeal, the hearings officer’s decision falls within the ORS 197.015(10) definition of “land use decision,” and LUBA has jurisdiction to review the hearings officer’s decision. *Kuhn v. Deschutes County*, 58 Or LUBA 483 (2009).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. LUBA will deny a motion to dismiss an appeal of a county decision to sell park land, where petitioners locally identified a comprehensive plan policy that could be interpreted to apply to a county decision to sell park land, and the county approves the sale of park land without responding to petitioner’s argument that sale of the park land is inconsistent with the cited comprehensive plan policy. *Kaye v. Marion County*, 58 Or LUBA 680 (2009).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision vacating a 30-foot by 100-foot section of public right-of-way is not a statutory land use decision that “concerns” the application of local land use regulations, even if in the course of addressing the statutory “public interest” road vacation standard the county considers the zoning map or zoning regulations that govern the surrounding area. *Bohnenkamp v. Clackamas County*, 56 Or LUBA 17 (2008).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county adopts a resolution approving an urban renewal plan under ORS 457.105 and in approving the plan finds that the plan conforms to the county’s comprehensive plan, the resolution is a land use decision as defined in ORS 197.015(1)(a)(A). *Granada Land Co. v. City of Albany*, 56 Or LUBA 475 (2008).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A letter and memorandum from a county counsel to a county cartography office directing the cartography office to amend the county’s tax maps to reflect a judicially ordered partition is not a land use decision because it does not concern the adoption, amendment or application of any goals, comprehensive plan provisions, or land use regulations. *Stricklin v. Clatsop County*, 54 Or LUBA 334 (2007).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A petitioner fails to establish that LUBA has jurisdiction over a franchise agreement entered into between a county and a landfill operator, where the petitioner identifies no comprehensive plan provision or land use regulation that the decision applies or concerns. *Kamp v. Washington County*, 54 Or LUBA 717 (2007).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. LUBA will grant a motion to transfer to circuit court an appeal of an ordinance that establishes a permitting process for closing mobile home parks, where the petitioner alleges but does not substantiate that the decision concerns the application of statewide planning goals, comprehensive plan provisions or land use regulations. *Century Drive Mobile Home Park, LLC v. City of Bend*, 53 Or LUBA 1 (2006).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. An agreement between a local government and a private party for the development and operation of a sports park is not a land use decision as defined in ORS 197.015(11)(a)(A), where the agreement conditions the private party’s future use of the property on compliance with all applicable land use rules and regulations and the local government applied no goals, land use

regulations, or comprehensive plan provisions in entering into the agreement. *Dorall v. Coos County*, 53 Or LUBA 32 (2006).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A city council decision to dismiss a local appeal is a land use decision, where the underlying decision revokes a conditional use permit and both the city council proceedings and the underlying revocation decision were subject to procedures set out in the city’s zoning ordinance. *Merton v. City of Jefferson*, 53 Or LUBA 559 (2007).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A determination that no local right of appeal exists for a land use compatibility statement concerns at least the application of the local government’s local appeal regulations, and thus is a land use decision under ORS 197.015(11). *Hoschek v. Tillamook County*, 52 Or LUBA 793 (2006).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the zoning of property is discussed by a local appellate body during proceedings to revoke and reinstate a building permit, but the revocation and reinstatement decisions are not governed by the zoning ordinance or other land use regulations, the mere reference to the zoning ordinance does not mean the decision “concern[ed] the * * * application of [a] land use regulation,” within the meaning of ORS 197.015(11)(a). *Barnas v. City of Portland*, 51 Or LUBA 750 (2006).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a city decision to reinstate a building permit does not apply any of the land use standards identified at ORS 197.015(11)(a)(A), and the petitioner does not argue that the city should have applied any such land use standards in addition to the Uniform Building Code provisions that the city applied to reinstate the building permit, petitioner fails to establish that the reinstatement decision is a land use decision subject to LUBA review. *Barnas v. City of Portland*, 51 Or LUBA 750 (2006).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. There is no clear connection between the Clean Water Services District’s design and construction standards and the county’s comprehensive plan, and the standards are therefore not “land use regulations.” Therefore, decisions issued pursuant to those standards, such as a sensitive area pre-screening site assessment and the issuance of an erosion control permit, do not concern the adoption, amendment or application of a land use regulation, and are not “land use decisions” pursuant to ORS 197.015(10)(a). *Angius v. Clean Water Services District*, 50 Or LUBA 154 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Petitioners fail to demonstrate that an improvement agreement specifying how public improvements required by a preliminary plat approval will be financed and constructed is a land use decision or limited land use decision, where petitioners do not establish that the city applied land use approval criteria or exercised discretion in approving the agreement. *Bellingham v. City of King City*, 50 Or LUBA 683 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where prior appeals to LUBA and the Court of Appeals concerning a property near the ocean have established that a particular comprehensive plan goal regarding environmentally hazardous areas applies at the time a building permit is issued, a subsequent city decision to issue a building permit for the property is a land use decision. *Jebousek v. City of Newport*, 50 Or LUBA 724 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a petitioner does not demonstrate that a resolution approving an amendment to a development agreement applies, adopts or amends a land use regulation or comprehensive plan provision, it fails to satisfy its burden to demonstrate that the resolution satisfies the statutory definition of “land use decision.” *ZRZ Realty Company v. City of Portland*, 49 Or LUBA 309 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Land use application fees, like local appeal fees, are an integral part of the zoning code provisions governing the processing and review of land use applications. A decision adopting a schedule of land use application fees pursuant to a local land use regulation is a “land use decision” subject to LUBA’s jurisdiction, because it concerns the adoption, amendment or application of a land use regulation, and is not subject to the “fiscal” exception to LUBA’s jurisdiction. *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A transportation planning document that is intended to demonstrate compliance with federal law and references statewide planning goals, comprehensive plan provisions or land use regulations because its language was taken from a statewide transportation system plan does not *apply* the cited goals, plan provisions or land use regulations and is not a “land use decision” pursuant to ORS 197.015(10). *Friends of Eugene v. Lane Council of Governments*, 49 Or LUBA 672 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the county’s comprehensive plan contains language applicable to a decision approving formation of a special district, and the county specifically addresses the language in its decision, the decision “concerns” the application of a comprehensive plan provision and is a “land use decision” under ORS 197.015(10)(a)(A)(ii). *Kneeland v. Douglas County*, 48 Or LUBA 347 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. In issuing a building permit to remodel an existing commercial facility, a city was not required to apply zoning ordinance criteria that govern rezoning decisions and, therefore, those rezoning criteria provide no basis for asserting that the building permit decision qualifies as a land use decision that is subject to LUBA review. *Wetzel v. City of Eugene*, 48 Or LUBA 491 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. In issuing a building permit to remodel an *existing* commercial facility, a city was not

required to apply zoning ordinance development standards that apply to development of large *new* commercial development and, therefore, those zoning ordinance criteria provide no basis for asserting that the building permit decision qualifies as a land use decision that is subject to LUBA review. *Wetzel v. City of Eugene*, 48 Or LUBA 491 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where LUBA initially denies a motion to dismiss based on a mistaken understanding that discretionary zoning ordinance criteria cited by petitioner apply to an appealed building permit, but respondent and intervenor later demonstrate that the discretionary zoning ordinance criteria cited by petitioner do not apply, LUBA will dismiss the appeal. *Wetzel v. City of Eugene*, 48 Or LUBA 491 (2005).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A county’s decision to accept a deed for a road easement is a land use decision, where the county has adopted procedures as part of its subdivision regulations that require the county to apply standards in those regulations and its zoning ordinance in accepting land for use as county roads. *Niederhof v. Deschutes County*, 48 Or LUBA 626 (2004).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. An initiative that establishes a policy to preserve the city waterfront as a public park, effectively prohibits new uses otherwise allowed under the current comprehensive plan and zoning designations, and allows existing uses to continue only as nonconforming uses is a decision that “concerns * * * the application” of the city’s land use regulations within the meaning of ORS 197.015(10), and therefore the initiative is a land use decision within LUBA’s jurisdiction. *Port of Hood River v. City of Hood River*, 47 Or LUBA 62 (2004).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A local government decision “concerns” the application of a comprehensive plan provision or land use regulation if (1) the decision maker was required by law to apply its plan or land use regulations as approval standards, but did not, or (2) the decision maker in fact applied plan provisions or land use regulations. *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a refinement plan policy prohibits “development” of property prior to master plan approval, the code definition of “development” includes excavation and fill, and there is no textual or contextual basis to conclude that “development” for purposes of the policy excludes excavation and fill authorized by a grading permit, then the policy is applicable to a challenged permit authorizing excavation and fill on the property. Because the grading permit “concerns” the application of a comprehensive plan provision, the permit is a land use decision subject to LUBA’s jurisdiction. *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. That regulations governing grading permits do not expressly require compliance with comprehensive plan policies does not necessarily indicate that specific comprehensive plan policies cannot apply to grading permits, especially where the grading permit regulations require

planning department review for compliance with “any applicable laws.” *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. 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).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Adoption of a decision-making process that allows quasi-judicial application of a county’s land use regulations to be nullified by the voters on a case-by-case basis “concerns * * * the application” of the county’s land use regulations, within the meaning of ORS 197.015(10)(a), and thus a county initiative adopting that decision-making process is a “land use decision” within LUBA’s exclusive jurisdiction. *Sievers v. Hood River County*, 46 Or LUBA 635 (2004).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision to reconsider an earlier decision and reserve final judgment on the merits of that earlier decision is not itself a land use decision subject to LUBA’s jurisdiction, where the decision to reconsider does not concern the application of any comprehensive plan provision or land use regulation, and the decision to reconsider is accurately characterized as an interlocutory decision and not a final decision of any kind. *Grabhorn v. Washington County*, 46 Or LUBA 672 (2004).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A final city decision to purchase property within the Willamette River Greenway is a land use decision, where the city is required to apply its comprehensive plan provisions that identify the property the city will purchase within the Willamette River Greenway for Willamette River Greenway purposes. *Willamette Oaks, LLC v. City of Eugene*, 46 Or LUBA 813 (2004).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government has failed to amend its land use regulations to implement a land use statute, such as ORS 215.263 that governs partitions in EFU zones, a county decision that directly applies such statutes pursuant to ORS 197.646(3) is a land use decision subject to LUBA’s jurisdiction, notwithstanding that the county does not apply a statewide planning goal, comprehensive plan provision or land use regulation. *Perkins v. Umatilla County*, 45 Or LUBA 445 (2003).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A resolution that initiates condemnation of property is not a statutory land use decision, where petitioner identifies no statewide planning goal, comprehensive plan or land use regulation provision that must be applied in adopting such a resolution. *Decker v. City of Cornelius*, 45 Or LUBA 539 (2003).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A development permit decision that refers to a prior land use decision but does not

apply any land use regulations is not a “land use decision” as that term is defined in ORS 197.015(10)(a)(A) and, therefore, is not a decision subject to LUBA’s jurisdiction. *Arlington Heights Neigh. Assn. v. City of Portland*, 45 Or LUBA 559 (2003).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. LUBA has jurisdiction to review a hearings officer decision on reconsideration that determines the location of a zoning boundary, when in the course of making that decision the hearings officer is obliged to address a challenge to the hearings officer’s authority to review the matter because the underlying LUBA appeal had been dismissed and the hearings officer concludes that he does have that authority in part because the local zoning code does not prohibit such review. *6710 LLC v. City of Portland*, 43 Or LUBA 177 (2002).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision denying a request to reconsider an earlier land use decision is itself a statutory land use decision only if the decision on reconsideration applies one or more statewide planning goals, comprehensive plan provisions, or land use regulations. A decision that summarily denies the reconsideration request without applying any goal, plan provision or land use regulation is not a statutory land use decision. *Wiper v. City of Eugene*, 43 Or LUBA 649 (2002).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government adopts a decision following remand from LUBA that applies both land use criteria and non-land use criteria, that decision is a land use decision that may be appealed to LUBA. That all issues concerning the decision’s compliance with land use criteria may have been resolved or waived under *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), does not mean that a decision that applies land use criteria is not a land use decision. *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 560 (2001).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a city’s tree preservation ordinance was identified during acknowledgment as an implementing measure to achieve compliance with Statewide Planning Goal 5, a decision that amends the tree preservation ordinance concerns the application of Goal 5 and is therefore a statutory land use decision subject to LUBA’s jurisdiction. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 453 (2002).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A planning commission decision to deny a request to reopen a public hearing and reconsider an earlier decision approving a subdivision is a land use decision subject to LUBA’s jurisdiction, where the local code allows for reconsideration and the decision maker exercised its authority under the code to deny the request. *Hausam v. City of Salem*, 40 Or LUBA 234 (2001).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A city decision determining that the terms of a development permit condition, as interpreted, have not been satisfied is not a statutory land use decision, where the decision does not apply or interpret any goal, plan or land use regulation. *Garrard v. City of Newport*, 40 Or LUBA 258 (2001).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision amending a city’s comprehensive plan housing needs inventory and analysis pursuant to ORS 197.296(3) is a *final* decision and therefore a “land use decision” as defined by ORS 197.015(10)(a)(A), notwithstanding that the amended inventory and analysis may require the city to adopt further land use decisions to comply with ORS 197.296(4) and (5). *DLCD v. City of McMinnville*, 40 Or LUBA 591 (2001).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. ORS 197.626 provides the Land Conservation and Development Commission with exclusive jurisdiction to review decisions that amend an urban growth boundary (UGB) to include more than 50 acres. However, ORS 197.626 does not deprive LUBA of jurisdiction over a final decision that amends the city’s comprehensive plan housing needs inventory but does not amend the UGB or otherwise determine how the city will accommodate the identified housing needs. *DLCD v. City of McMinnville*, 40 Or LUBA 591 (2001).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government makes it clear that the ordinance it is adopting is not intended to be a land use regulation, LUBA generally does not have jurisdiction to review such an ordinance. However, where the connection between the ordinance and specific comprehensive plan provisions is clear, and the inference that the ordinance implements the comprehensive plan provisions is unavoidable, the ordinance is a land use regulation subject to review by LUBA. *Rest-Haven Memorial Park v. City of Eugene*, 39 Or LUBA 282 (2001).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where petitioner does not establish that the city either applied or was required to apply land use standards when it made a final decision to condemn petitioner’s EFU-zoned property for a utility facility, in advance of seeking county land use approval for that facility, the challenged decision is not a land use decision over which LUBA has jurisdiction. *E & R Farm Partnership v. City of Gervais*, 39 Or LUBA 251 (2000).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision that does not apply the statewide planning goals, a comprehensive plan provision or a land use regulation, but rather applies a condition of approval in a previously approved land use permit, does not fall within the statutory definition of a “land use decision.” *Frevach Land Company v. Multnomah County*, 38 Or LUBA 729 (2000).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A county decision determining that a letter from a city transportation director satisfies a plan design element and a specific development’s condition of approval is a land use decision subject to LUBA review. *Cedar Mill Creek Corr. Comm. v. Washington County*, 37 Or LUBA 1011 (2000).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. An annexation decision that includes findings of compliance with local land use standards is a land use decision subject to LUBA review. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. If an annexation decision includes the application of and findings of compliance with local land use regulations, it is a land use decision, notwithstanding that, in the absence of the application of land use standards, a city’s discretionary decision to annex property is not a land use decision. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county’s comprehensive plan contains or is required to contain provisions that by their terms apply to a decision vacating a county road within city limits, the county must apply those provisions. If any such provisions apply, the county’s road vacation decision is a land use decision subject to LUBA’s jurisdiction. *Oregon Shores Cons. Coalition v. Lincoln County*, 36 Or LUBA 288 (1999).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision approving a subdivision pursuant to county comprehensive plan and land use regulations is a land use decision under ORS 197.015(10)(a). That a subdivision approval decision is conditioned on construction of road access for the subdivision does not convert that decision or any part of the decision into the type of transportation facility decision that is excluded from the statutory definition of “land use decision” by ORS 197.015(10)(b)(D). *Warrick v. Josephine County*, 36 Or LUBA 81 (1999).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. An informational letter composed by an assistant planner explaining that the city’s code does not contain a time limit for early subdivision approval does not involve the application or interpretation of any code provision and is thus not a land use decision under ORS 197.015(10)(b)(A) or a limited land use decision under ORS 197.015(11). *Ward v. City of Medford*, 35 Or LUBA 219 (1998).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Background reports, which typically contain data and information that describe a community’s resources and features and address the topics specified in the applicable Statewide Planning Goals, are not the equivalent of comprehensive plans, which set forth the community’s long-range objectives and the policies by which it intends to achieve them. *Mount Hood Stewardship Council v. Clackamas County*, 33 Or LUBA 284 (1997).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where petitioner does not demonstrate that a forest management strategy is part of a county’s comprehensive plan, petitioner has not carried its burden of showing that the application of the forest management strategy is a land use decision over which LUBA has jurisdiction. *Mount Hood Stewardship Council v. Clackamas County*, 33 Or LUBA 284 (1997).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision that parcels may be sold separately constitutes a land use decision subject to LUBA jurisdiction under ORS 197.015(10)(a)(A) when a county follows local land use

procedures and applies local land use regulations in making its decision. *Joseph v. Baker County*, 33 Or LUBA 38 (1997).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. The decision to vacate 105 feet of a public road is not a “plan,” as that term is used in ORS 197.250. The county’s land use “plans, programs, rules or regulations affecting land use” are contained in its acknowledged comprehensive plan and implementing regulations. *Pacific Western Co. v. Lincoln County*, 32 Or LUBA 317 (1997).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. The city’s affirmation of the status of an existing use as a nonconforming use requires the application of the city’s zoning ordinance and is therefore a land use decision over which LUBA has jurisdiction. *Smith v. City of Phoenix*, 31 Or LUBA 358 (1996).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Notwithstanding the use of the word “ordinance” in ORS 197.105(11), which defines “land use regulation,” whether a land use regulation is adopted by resolution or ordinance is unimportant when determining if LUBA has jurisdiction. *Boom v. Columbia County*, 31 Or LUBA 318 (1996).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. In modifying a condition to the earlier approval of a conditional use permit, a county planning director exercised policy judgment in the application of land use regulations, thereby making a statutory land use decision. *Franklin v. Deschutes County*, 30 Or LUBA 33 (1995).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A city decision to assume jurisdiction over and maintenance responsibility for a developed street in the downtown area satisfies the statutory test for a land use decision only if there are provisions in the city plan or land use regulations that establish a standard for making such a decision. *Anderson v. City of Gates*, 29 Or LUBA 321 (1995).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government decision to classify petitioner’s proposed comprehensive plan amendment as “major” is final, and denies petitioner a *right* he would otherwise have under the local code to have his proposed amendment reviewed on its merits, the local government’s decision is a land use decision as defined in ORS 197.015(10)(a)(A)(iii) and is subject to review by LUBA. *Cone v. City of Eugene*, 29 Or LUBA 133 (1995).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A decision concerns the application of a “land use regulation,” as defined by ORS 197.015(11), where it concerns the application of a provision of the local government’s zoning code, even though the particular zoning code section at issue might not independently satisfy the statutory definition of land use regulation if not contained within the zoning code. *Hick v. Marion County*, 28 Or LUBA 782 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A local code sewer improvement reimbursement chapter which implements comprehensive plan provisions constitutes a “general ordinance establishing standards for implementing a comprehensive plan” and, therefore, is a “land use regulation” within the meaning of within the meaning of ORS 197.015(11). *The Petrie Company v. City of Tigard*, 28 Or LUBA 535 (1995).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government’s comprehensive plan and land use regulations have no provisions for the reconsideration or rehearing of governing body decisions, a decision to deny a request for reconsideration does not concern the application of a plan provision or land use regulation and, therefore, is not a land use decision under ORS 197.015(10)(a)(A). *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. That LUBA may consider a statewide planning goal that is implemented by a particular plan or code provision, in determining whether the local government’s interpretation of the plan or code provision should be affirmed under ORS 197.829(4), does not make that goal an approval standard for decisions made under an acknowledged plan and land use regulations. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. For a decision to concern the application of a land use regulation, as provided in ORS 197.015(10)(a)(A)(iii), it is not enough that the decision touch on some aspect of a land use regulation; the land use regulation must contain provisions that are standards or criteria for making the challenged decision. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. In the absence of code provisions that regulate onsite sewage treatment facilities separately from the uses they serve, a local government decision to allow construction of an onsite sewage treatment facility to serve a use determined to be an outright permitted use by other local government decisions, is not a decision concerning the application of the local code. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A local government’s determination of compatibility with its acknowledged comprehensive plan and land use regulations, made as part of a state agency permit approval process, is a “final” decision applying the local plan and regulations if (1) the state agency is required, by statute, rule or other legal authority, to assure the permit is compatible with the local plan and regulations; and (2) the state agency is authorized to rely on the local government’s determination of compatibility. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. After acknowledgment, a city is not required to apply the statewide planning goals to land use decisions that do not amend its acknowledged plan or land use regulations. Therefore, a

city decision to provide city sewer and water service to development outside city limits does not concern the application of the statewide planning goals. *Fraser v. City of Joseph*, 28 Or LUBA 217 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. To decide whether a challenged decision is a “land use decision” under ORS 197.015(10)(a)(A)(ii), because it concerns the application of a comprehensive plan, LUBA must determine whether arguably relevant plan provisions cited by the parties are standards or criteria for making the challenged decision. *Fraser v. City of Joseph*, 28 Or LUBA 217 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a challenged city council decision approving the provision of city sewer and water services outside city limits does not interpret arguably relevant comprehensive plan provisions with regard to whether they are approval criteria for the challenged decision, LUBA must remand the decision to the city to adopt such interpretations, before LUBA can determine whether the challenged decision is a land use decision subject to LUBA review. *Fraser v. City of Joseph*, 28 Or LUBA 217 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. 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. Neahkahnie Water District*, 27 Or LUBA 721 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A local government decision approving a building permit is a “land use decision” subject to review by LUBA if it involves the application of the goals, a comprehensive plan or a land use regulation and does not qualify as a ministerial decision under ORS 197.015(10)(b)(A) or (B). *Sullivan v. City of Ashland*, 27 Or LUBA 411 (1994).

226.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. 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).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government planning director has authority to interpret and apply the local zoning and subdivision ordinances, a letter by the planning director stating that a development complies with all requirements of those ordinances is a decision concerning the application of a land use regulation under ORS 197.015(10)(a)(A). *Hart v. Jefferson County*, 27 Or LUBA 688 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. An intergovernmental agreement between a city and a special district relating to city

provision of sewage treatment service to the district, which interprets various provisions of the city's comprehensive plan and determines no plan provisions govern the proposal, applies comprehensive plan provisions and, therefore, is a land use decision subject to LUBA review. *DLCD v. City of Donald*, 27 Or LUBA 208 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government compliance hearings officer order (1) applies the local zoning ordinance to the relevant facts in determining petitioners violated that ordinance, and (2) is the local government's final determination on the issues decided, the order is a "land use decision" subject to review by LUBA. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A special district decision that finally determines policy questions concerning how the district will provide sewerage service to an area, where that service will occur, and the level of that service, is an exercise of the district's planning duties and responsibilities under ORS 195.020(1) that must comply with the Statewide Planning Goals and is a land use decision subject to LUBA review. *DLCD v. Fargo Interchange Service District*, 27 Or LUBA 150 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Under ORS 197.175(1), city decisions to annex unincorporated territory concern the application of the statewide planning goals and, therefore, satisfy the statutory definition of a "land use decision." *Roloff v. City of Milton-Freewater*, 27 Or LUBA 80 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government refers to its land use regulations, finds facts and makes a decision that its land use regulations do not apply, its decision is a land use decision. The nature of the legal theory supporting its conclusion that its land use regulations do not apply does not affect whether the decision is properly viewed as a land use decision. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A chief planner's letter rejecting an attempt to file a local appeal of an earlier document explaining how land use regulation provisions are interpreted and applied is a land use decision, if the letter applies land use regulation provisions governing local appeals in concluding that no appeal is available, and there is no further appeal of the chief planner's letter available which must be exhausted. ORS 197.015(10)(a)(A)(iii). *Forest Park Neigh. Assoc. v. City of Portland*, 26 Or LUBA 636 (1994).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the challenged decision is a local government interpretation of a local land use regulation concerning its applicability to a particular use, and discretion was exercised by the local government in reaching that decision, the challenged decision is a land use decision subject to review exclusively by LUBA. *Kaady v. City of Cannon Beach*, 26 Or LUBA 614 (19/93).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Under the statutory test for a land use decision, the obligation to apply the Statewide

Planning Goals, a comprehensive plan provision or a land use regulation must arise from legal requirements contained in statutory, administrative rule or local ordinance provisions. *J.C. Reeves Corp. v. Sherwood Education Dist.* 88J, 26 Or LUBA 220 (1993).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the challenged decision is an intergovernmental agreement that does not adopt, amend or apply a local government’s plan or land use regulations, the challenged decision is not a land use decision as defined by ORS 197.015(10)(a)(A). *Many Rivers Group v. City of Eugene*, 25 Or LUBA 518 (1993).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the petition for review alleges the challenged decision applies provisions of a local government plan and land use regulations, it is not fatal to LUBA’s jurisdiction that the petition for review improperly characterizes the decision as a “land use decision” rather than a “limited land use decision.” *Schatz v. City of Jacksonville*, 25 Or LUBA 327 (1993).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. As the party seeking LUBA review, the burden is on petitioner to establish that the challenged decision is a land use decision. Where petitioner fails to identify any comprehensive plan provision as applicable to, or argue that any plan provision is an approval standard for, the challenged decision, LUBA will conclude the challenged decision does not concern the application of a comprehensive plan. *Price v. Clatsop County*, 25 Or LUBA 341 (1993).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. The use of land for a recreational parachuting center and for parachute landings is a “land use” subject to regulation by local land use ordinances. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where petitioners allege in the petition for review that the challenged decision approves a plan amendment and zone change, that allegation is adequate to establish LUBA’s jurisdiction. *Neuharth v. City of Salem*, 25 Or LUBA 267 (1993).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a water district has adopted a water allocation program that significantly limits the development of land in the district otherwise allowable under the applicable acknowledged county comprehensive plan and land use regulations, under ORS 197.185(1) a district decision made under such a program is “an action * * * with respect to a program affecting land use” to which the statewide planning goals apply and, therefore, is a “land use decision.” *Olson v. Neahkahnie Water District*, 25 Or LUBA 776 (1993).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A surface mining ordinance that establishes standards implementing comprehensive plan surface mining policies is a land use regulation, even if portions of that ordinance, read in isolation, do not establish standards for implementing the comprehensive plan. An ordinance

amending such a land use regulation is a land use decision subject to LUBA review. *Oregon City Leasing, Inc. v. Columbia County*, 25 Or LUBA 129 (1993).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. As used in the statutes identifying land use decisions subject to LUBA review, “local government decisions” includes decisions adopted through the initiative process. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 607 (1992).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the challenged decision simply applies the city’s fire code, and petitioner does not argue that the fire code is (1) a land use regulation, (2) a comprehensive plan provision, or (3) a goal provision, the challenged decision is not a statutory land use decision subject to LUBA’s jurisdiction. *Curtis Serve N Save v. City of Eugene*, 24 Or LUBA 341 (1992).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. In the absence of an adopted district program regulating the approval of water hookups for land use purposes, a water district action to approve an individual water hookup for a use consistent with the applicable acknowledged county plan and land use regulations is *not* an “action with respect to a program affecting land use” under ORS 197.185(1), to which the statewide planning goals apply. *Keating v. Heceta Water District*, 24 Or LUBA 175 (1992).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Allegations that the challenged decision violates a statewide planning goal and the local comprehensive plan and land use regulations are sufficient to constitute an allegation that the challenged decision is a land use decision under the statutory test, even where such allegations are found in the body of the petition for review, rather than in a separate statement of jurisdiction as required by OAR 661-10-030(3)(c). *Adkins v. Heceta Water District*, 23 Or LUBA 207 (1992).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A domestic water supply district’s adoption of water hookup standards which will significantly affect development activity is an action with respect to a program affecting land use to which the statewide planning goals apply under ORS 197.185(1) and, therefore, is a land use decision subject to LUBA review. *Adkins v. Heceta Water District*, 23 Or LUBA 207 (1992).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. That three separate governmental units share the same three member board as their governing bodies does not provide a basis for making a decision rendered by two of those governmental units a decision by all three. *Price v. Arch Cape Service District*, 22 Or LUBA 807 (1991).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county’s approval of a permit is mandated by an order of the circuit court issued pursuant to a writ of mandamus under ORS 215.428(7), the county’s decision approving the permit is not a “land use decision,” as defined in ORS 197.015(10), because the county was not required to apply its comprehensive plan or land use regulations in adopting that decision. *Gearhard v. Klamath County*, 22 Or LUBA 377 (1991).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the only determinations that must be made for the approval of a building permit are whether the applicant has certifications concerning septic approval and electrical and plumbing permits, and those determinations do not involve application of the goals, comprehensive plan, or land use regulations, the approval of the building permit is not a land use decision subject to LUBA’s jurisdiction. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. The question of whether a hearings officer appointed by the Department of Land Conservation and Development pursuant to an enforcement order acts on behalf of the local government or on behalf of DLCDC is governed by the terms of the enforcement order. *Pilling v. LCDC*, 22 Or LUBA 188 (1991).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where the issue on appeal is whether petitioner has a vested right to develop property in a manner inconsistent with current zoning regulations, and the resolution of that issue requires the application of city land use regulations from 1973 to the present, the challenged decision is a land use decision subject to LUBA’s jurisdiction. *Terraces Condo Assoc. v. City of Portland*, 22 Or LUBA 151 (1991).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a local government makes a final decision in which it denies an application for a DMV wrecking yard license, in part, on the basis of provisions in its comprehensive plan and land use regulations, the challenged decision “concerns * * * the application of” the city’s comprehensive plan and land use regulations within the meaning of ORS 197.015(10)(a)(A) and, consequently, is a land use decision over which LUBA has exclusive review authority. *Bradbury v. City of Independence*, 21 Or LUBA 535 (1991).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where it is not clear whether a city’s comprehensive plan and land use regulations already prohibit solid waste incinerators and that question is presented in a separate pending LUBA appeal, LUBA will not assume a city charter amendment which specifically prohibits solid waste incinerators has the legal effect of amending or adopting a plan or land use regulation. *Jentsch v. City of Sherwood*, 20 Or LUBA 575 (1991).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. The explicit requirement in Goal 11 that local governments provide in their plans for solid waste disposal facilities necessarily requires that Goal 11 be applied to any local government decision to prohibit a particular type of solid waste disposal facility. *Jentsch v. City of Sherwood*, 20 Or LUBA 575 (1991).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Where a county administrator’s decision on whether petitioners have a right to appeal a planning commission decision to the county board of commissioners required application of

provisions of the county zoning ordinance, that decision is a land use decision subject to review by LUBA. *Von Lubken v. Hood River County*, 20 Or LUBA 208 (1990).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. In determining whether a local government decision concerns the application of a comprehensive plan provision or a land use regulation, it is not sufficient that the decision may touch on some aspects of the comprehensive plan or land use regulations, rather the comprehensive plan or regulations must contain provisions intended as standards or criteria for making the decision. *City of Portland v. Multnomah County*, 19 Or LUBA 468 (1990).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. A comprehensive plan policy which simply directs a county to enter into urban area planning agreements with adjacent jurisdictions to coordinate land use planning does not *adopt* such agreements as part of the comprehensive plan. *City of Portland v. Multnomah County*, 19 Or LUBA 468 (1990).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Although ORS 197.825(3)(a) authorizes a local government to initiate proceedings in circuit court to enforce its plan and land use regulations, that statute does not require a county to proceed exclusively in that manner, particularly where the county has adopted a procedure for conducting local proceedings to determine whether its plan and land use regulations are violated. *Putnam v. Klamath County*, 19 Or LUBA 616 (1990).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Urban area planning agreements which have not been adopted by a local government by ordinance or resolution are not “land use regulations,” as defined in ORS 197.015(11). *City of Portland v. Multnomah County*, 19 Or LUBA 468 (1990).

26.2.4 LUBA Jurisdiction – Land Use Decision: Statutory Test – Goal, Plan or Land Use Regulation. Under ORS 92.100(1), a board of county commissioners’ role in signing a final subdivision plat prior to recording is simply to determine that the plat is in proper form for recording and, therefore, county approval of a final subdivision plat pursuant to ORS 92.100(1) is not a statutory test land use decision. *Elliott v. Lane County*, 18 Or LUBA 871 (1990).