

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. When a petitioner’s appeal is timely filed and the decision concerns the application of a land use regulation, the city’s decision to deny a local appeal of a fee waiver does not fall under the ministerial exception and review of the decision is not excepted from LUBA’s jurisdiction. *Riverview Abbey Mausoleum Co. v. City of Portland*, 78 Or LUBA 1057 (2018).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a county’s floodplain development permit standards require the county to evaluate whether proposed structures are authorized by right in the applicable zone, and that evaluation entails some inquiry into the intended use of the structures, if under the circumstances of the case that evaluation requires the exercise of interpretation or legal judgment then the resulting floodplain development permit is a “land use decision” as defined at ORS 197.015(10)(a) subject to LUBA’s jurisdiction, and not subject to the exclusion at ORS 197.015(10)(b)(A). *Rogue Advocates v. Jackson County*, 77 Or LUBA 181 (2018).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a decision on a floodplain development permit does not require interpretation or the exercise of legal judgment to determine whether development is authorized by right in the underlying zone, e.g., by reference to a list of uses permitted in the zone, or a previously issued, final decision such as a zoning classification decision or nonconforming use verification, then the decision falls within the exclusion at ORS 197.015(10)(b)(A) and is not a “land use decision” subject to LUBA’s jurisdiction. *Rogue Advocates v. Jackson County*, 77 Or LUBA 181 (2018).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. That application of code standards required the exercise of legal judgment for purposes of ORS 197.015(10)(b)(A) means only that a county’s decision is not excluded from the definition of “land use decision” at ORS 197.015(10)(a), and hence LUBA’s review jurisdiction. That conclusion does not compel the conclusion that the county’s decision is also a statutory “permit” as defined at ORS 215.402(4) and thus the type of decision for which there is a statutory obligation to provide notice and an opportunity to request a hearing under RS 215.416 or the county’s implementation of that statute. *Reed v. Jackson County*, 77 Or LUBA 527 (2018).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the county decision at issue in petitioner’s appeal merely increased appeal fees for local appeals to account for inflation as mandated by a provision of the county’s code, and in approving the code-mandated increase, the county did not “exercise * * * policy or legal judgment,” the county’s decision falls within the ministerial exception at ORS 197.015(10)(b)(A) and is therefore not a land use decision subject to LUBA’s jurisdiction. *Central Oregon Landwatch v. Deschutes County*, 76 Or LUBA 222 (2017).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. LUBA will conclude that a petitioner has not satisfied the burden to establish that LUBA has jurisdiction over an appeal, where the challenged email message from a county commissioner to the petitioner appears to merely reiterate and affirm a decision made more than a year earlier regarding the same request from the petitioner, and the petitioner does not establish that, even if the challenged decision was a new decision, the local government made a decision under land use

standards that require interpretation or the exercise of policy or legal judgment. *Forbes v. Linn County*, 76 Or LUBA 315 (2017)

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Where a decision approving property line adjustments was required to determine if the resulting parcels complied with setback requirements, and the applicable setback required “minimal intrusion into forest areas” the decision required the exercise of “policy or legal judgment” and therefore the exception to the definition of “land use decision” and LUBA’s review jurisdiction provided by ORS 197.015(10)(b)(A) does not apply. *Bowerman v. Lane County*, 75 Or LUBA 86 (2017).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. The ORS 197.015(10)(b)(A) exception for decisions “made under land use standards that do not require interpretation or the exercise of legal judgment” could apply to a county decision concerning an Oregon Department of Motor Vehicles business certificate to operate as a motor vehicle dismantler, even if the decision applies standards that require interpretation or the exercise of legal judgment, so long as those “standards” are not “land use standards.” *Devlin v. Linn County*, 75 Or LUBA 163 (2017).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. ORS 822.110(1)(a) and ORS 822.140(2)(b) simply require a local government to determine if property for a proposed motor vehicle dismantler use is zoned for industrial use. Where it is clear that the property is zoned for industrial use, a local government determination that the property is zoned for industrial use does not require “interpretation or the exercise of legal judgment,” for purposes of determining whether the ORS 197.015(10)(b)(A) exception to the statutory definition of “land use decision” for decisions “made under land use standards that do not require interpretation or the exercise of legal judgment” applies. *Devlin v. Linn County*, 75 Or LUBA 163 (2017).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Where a land use compatibility statement does not identify the land use to be served by proposed storage of groundwater in two reservoirs, and on appeal the applicant does not identify what land use is served by the groundwater, LUBA cannot resolve the dispute over whether the decision is excluded from LUBA’s jurisdiction under ORS 197.015(10)(b)(A), for decisions applying land use regulations that do not require interpretation or the exercise of legal judgment, because it is not clear what land use regulations apply. *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Where on appeal of a land use compatibility statement (LUCS) concluding that no county land use regulations apply to the proposed storage of groundwater in two reservoirs, the applicant fails to demonstrate that the decision is excluded from LUBA’s jurisdiction under ORS 197.015(10)(b)(A) (for decisions applying land use regulations that do not require interpretation or the exercise of legal judgment), by arguing that the county’s land use regulations should be interpreted to exempt construction of the two reservoirs from county approval. Even if that argument is correct, that the applicable land use regulations require interpretation defeats application of the exclusion at ORS 197.015(10)(b)(A). *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision does not fall within the ministerial exception at ORS 197.015(10)(b)(A) for decisions that do not require interpretation or the exercise of legal judgment, where the decision required the local government to determine that some arguably applicable standards did not apply to the application and that determination required the exercise of legal judgment. *Agnew v. Josephine County*, 75 Or LUBA 527 (2017).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A city attorney’s determination that the city code provides no right of local appeal over a city planner’s letter commenting on a pending land use matter is not a decision that is made under standards that require interpretation or the exercise of policy or legal judgment, where it is clear and unambiguous that the city’s code provides a right of local appeal only for decisions that, but for the appeal, would be capable of becoming a final city decision, and does not provide a right of appeal over a comment letter, which is not capable of becoming a final decision of any kind. *MGP X Properties, LLC v. City of Sherwood*, 74 Or LUBA 476 (2016).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Because the operative terms of two exclusions to the definition of “land use decision” at ORS 197.015(10)(b)(A) (decision made under standards that do not require interpretation or exercise of discretion) and ORS 197.015(10)(b)(B) (building permit decisions issued under clear and objective standards) overlap significantly, LUBA will address responses couched in the language of ORS 197.015(10)(b)(A), even though the motion to dismiss invokes only ORS 197.015(10)(b)(B). *McCough v. City of Eugene*, 74 Or LUBA 620 (2016).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. 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. *McCough v. City of Eugene*, 74 Or LUBA 620 (2016).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a city’s code is ambiguous regarding whether site review is required for a proposed apartment building because it proposes “needed housing,” a building permit decision approving the apartment building is not issued under clear and objective standards for purposes of the exclusion to LUBA’s jurisdiction at ORS 197.015(10)(b)(B). *McCough v. City of Eugene*, 74 Or LUBA 620 (2016).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A development standard requiring that a site with frontage on two or more streets take access from the lower classification street, unless “physical conditions preclude locating the access connection” requires interpretation or the exercise of legal judgment and is therefore not clear and objective,

for purposes of the exclusion to LUBA's jurisdiction at ORS 197.015(10)(b)(B). *McCollough v. City of Eugene*, 74 Or LUBA 620 (2016).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A development standard requiring that buildings be located in 40 percent of the street frontage width, defined to exclude “non-buildable areas as determined by the planning director,” requires interpretation or the exercise of legal judgment and is therefore not clear and objective, for purposes of the exclusion to LUBA's jurisdiction at ORS 197.015(10)(b)(B). *McCollough v. City of Eugene*, 74 Or LUBA 620 (2016).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the undefined code term “frontage” as applied to a cul-de-sac is ambiguous regarding whether the frontage is measured along the curve of the property line or by drawing a straight line across the cul-de-sac from one property border to another border, the standard is not clear and objective, for purposes of the exclusion to LUBA's jurisdiction at ORS 197.015(10)(b)(B). *McCollough v. City of Eugene*, 74 Or LUBA 620 (2016).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. In determining that four applications to adjust the property lines of five properties, four of which are part of a platted subdivision, could be approved as property line adjustments rather than as a replat of a recorded subdivision, the county interpreted its land use regulations and exercised legal judgment, and therefore the challenged decision is not subject to the ministerial exception at ORS 197.015(10)(b)(A). *Balsly v. Benton County*, 73 Or LUBA 287 (2016).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. 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).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision to proceed to issue a floodplain permit for an asphalt batch plant, while an earlier decision that determined the scope of the batch plant that qualified as a nonconforming use was on appeal to LUBA and subject to reversal or remand, required “interpretation or the exercise of policy or legal judgment,” so that the exception to LUBA's jurisdiction set out at ORS 197.015(10)(b)(A) does not apply and LUBA has jurisdiction to review the floodplain permit decision on the merits. *Rogue Advocates v. Jackson County*, 70 Or LUBA 163 (2014).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. ORS 197.015(10)(b)(A) exempts from the ORS 197.015(10)(a) definition of “land use decision,” and from LUBA review, decisions that require no “exercise of policy or legal judgment.” Where a county moves to dismiss an appeal, asserting that the ORS 197.015(10)(b)(A) exemption applies, and petitioners offer no understandable response to that jurisdictional argument, petitioners fail to carry their burden to establish that LUBA has jurisdiction. *Early v. Jackson County*, 70 Or LUBA 273 (2014).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision does not fall within the ministerial exception at ORS 197.015(10)(b)(A) for decisions that do not require interpretation, where the decision required the local government to determine that some arguably applicable standards did not apply to the application and that determination required the exercise of legal judgment. *Del Rio Vineyards LLC v. Jackson County*, 68 Or LUBA 553 (2013).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. An application submittal requirement is not a “land use standard” within the meaning of ORS 197.015(10)(b)(A) where it is not connected to any substantive approval requirement. *Lazarus v. City of Milwaukie*, 67 Or LUBA 226 (2013).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where an apparent ambiguity in the text of a local code is presented by an arguable conflict between two different code provisions and a county decision to approve a farm stand authorized under local legislation that implements ORS 215.213(1)(r) requires the county to resolve that conflict, the exclusion from the statutory definition of “land use decision” at ORS 197.015(10)(b)(A) for a decision “[t]hat is made under land use standards that do not require interpretation or the exercise of policy or legal judgment” does not apply, and the farm stand decision is a land use decision. *Keith v. Washington County*, 66 Or LUBA 80 (2012).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Many of the statutory criteria for uses allowed under ORS 215.213(1) and 215.283(1) are not clear and objective, but the fact that subsection (1) uses may not be subjected to additional local regulations does not necessarily mean that a decision approving such uses cannot be a land use decision. *Keith v. Washington County*, 66 Or LUBA 80 (2012).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Under the inquiry required by *Tirumali v. City of Portland*, 169 Or App 241, 246, 7 P3d 761 (2000), *rev den*, 331 Or 674, 21 P3d 96 (2001), a building permit does not qualify for either of the exceptions set out in ORS 197.015(10)(b)(A) and (B) if the applicable land use regulations are ambiguous. The applicable land use regulations are ambiguous, if they “can plausibly be interpreted in more than one way.” *Richmond Neighbors v. City of Portland*, 66 Or LUBA 464 (2012).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where applicable overlay zone regulations do not specify how they apply to a site that is located partially within the overlay zone and partially outside the overlay zone, and the overlay zones can be applied in more than one plausible way in that circumstance, the overlay zone regulations are ambiguous and a building permit that applies those overlay zone regulations that is appealed to LUBA does not qualify for either of the exceptions to LUBA’s review jurisdiction set out at ORS 197.015(10)(b)(A) and (B) for ministerial decisions that do not require interpretation or are subject to clear and objective standards. *Richmond Neighbors v. City of Portland*, 66 Or LUBA 464 (2012).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A planning staff decision to charge the local appeal fee required by a city fee schedule falls within the ORS 197.015(10)(b)(A) exclusion to the definition of “land use decision,” for decisions that do not require interpretation or the exercise of policy or legal judgment, where staff had no discretion under city code or elsewhere to do anything but charge the local appeal fee set out in the city fee schedule. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 209 (2012).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A code enforcement decision determining the location of a floodplain on property does not fall within the ministerial exception at ORS 197.015(10)(b)(A) for decisions that do not require interpretation, where the decision relies on a new floodplain delineation rather than the county’s adopted floodplain maps, and determining what source of authority the county can use under its code to locate floodplain boundaries in the context of a code enforcement action requires code interpretation. *Bratton v. Washington County*, 65 Or LUBA 461 (2012).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Determining whether a proposed building is allowed in the EFU zone under ORS 215.213(1)(e) or 215.283(1)(e) as a building “customarily provided in conjunction with farm use” requires the local government to determine whether the land is currently employed for farm use and whether the proposed building is of the type that is customarily combined with the farm use in question. Because those determinations are not clear and objective, a building permit to approve such a building is not subject to the ORS 197.015(10)(b)(B) exception for “building permits issued under clear and objective standards.” *Bratton v. Washington County*, 65 Or LUBA 461 (2012).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Some of the ORS 215.705(1) standards to approve a lot of record dwelling, such as the requirement that the parcel be “lawfully created,” that the dwelling comply with applicable comprehensive plan provisions, and that the dwelling be consistent with big-game habitat limitations on residential density, require the exercise of policy or legal judgment, and therefore a decision approving or denying a lot of record dwelling under such standards is a land use decision as defined at ORS 197.015(10)(a), and does not fall within the exception for ministerial decisions at ORS 197.015(10)(b)(A). *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Planning department staff exercised considerable legal judgment in concluding that it could rely on a prior planning department decision, which authorized ministerial approval of certain uses, to approve a new industrial use, where that prior planning department decision was appealed and never became final. Because the planning department had to apply land use laws to approve the new industrial use and exercised considerable legal judgment in relying on its prior decision to grant that approval, the ORS 197.015(10)(b)(A) exception to the statutory definition of “land use decision” for decisions that do not require the “exercise of * * * legal judgment” does not apply. *Hardesty v. Jackson County*, 62 Or LUBA 228 (2010).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A permit extension under a standard that requires only a finding that the permit is “current as of January 1, 2010” does not require interpretation or the exercise of policy or legal judgment, and

the permit extension is therefore excluded from the definition of “land use decision” under ORS 197.015(10)(b)(A). The requirement that the permit be “current as of January 1, 2010” cannot plausibly be interpreted in more than one way. *Brodersen v. City of Ashland*, 62 Or LUBA 471 (2010).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A permit extension under a standard that allows an “additional 12-month month extension” does not require interpretation, as that phrase can be plausibly read in only one way: to allow an extension for an additional 12 month period from the date the permit would otherwise expire. *Brodersen v. City of Ashland*, 62 Or LUBA 471 (2010).

26.6 LUBA Jurisdiction – Mootness. In the limited circumstance in which an applicant has withdrawn an application that led to a decision that is pending before LUBA, a local government could, consistent with *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660, *rev’d on other grounds*, 97 Or App 687, 776 P2d 1315 (1989), adopt a new land use decision that revokes the decision that has been appealed to and is pending before LUBA. That new decision would likely have the effect of rendering the pending appeal of the previous decision moot. *Jacobsen v. Douglas County*, 62 Or LUBA 461 (2010).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. To demonstrate that that a code requirement for a “minimum of 10 feet between buildings” is not clear and objective for purposes of the ORS 197.015(10)(b)(B) exclusion to LUBA’s jurisdiction, a petitioner must demonstrate that a key word or phrase in that code provision can be interpreted in more than one way. *621 Company v. City of Eugene*, 61 Or LUBA 1 (2010).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A code requirement for a “minimum of 10 feet between buildings” is not ambiguous with respect to whether the 10-foot setback is measured from building features that have been removed, where the petitioner does not identify any text or context plausibly suggesting that the setback should be measured from previously removed building features. *621 Company v. City of Eugene*, 61 Or LUBA 1 (2010).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A code provision requiring “articulation” of exterior building walls by incorporating certain design features could be ambiguous with respect to whether a metal awning qualifies as an unlisted type of “articulation.” However, where the context of that code provision includes language that specifically refers to awnings as one type of “articulation,” no ambiguity exists and the articulation standard is clear and objective, for purposes of the ORS 197.015(10)(b)(B) exclusion to LUBA’s jurisdiction. *621 Company v. City of Eugene*, 61 Or LUBA 1 (2010).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A building permit decision that denies development authorized under a city’s code does not fall within the ministerial exceptions to LUBA’s jurisdiction at ORS 197.015(10)(b)(A) or (B), where the decision includes an interpretation of an ambiguous local code provision, to the effect that development restrictions in a prior land use approval under an old version of the city’s development code require denial of development that is otherwise permitted outright under the

city's current development code. *Noble Built Homes, LLC v. City of Silverton*, 60 Or LUBA 460 (2010).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Where issuing a floodplain review permit requires calculating whether the cumulative effect of a proposed development in a designated floodplain increases the base flood elevation more than one foot, and that calculation can require either interpretation or the exercise of legal judgment, a decision to issue the permit is a land use decision. *Johnson v. Jackson County*, 59 Or LUBA 94 (2009).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

When a local government dismisses a local appeal of a decision that is a land use decision, LUBA has jurisdiction to review that dismissal even if the dismissal did not require interpretation or the exercise of policy or legal judgment. *Golden v. City of Silverton*, 58 Or LUBA 399 (2009).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Where a local government's decision does not involve the exercise of policy or legal judgment, the decision is not a land use decision and LUBA does not have jurisdiction to review it. ORS 197.015(10)(b)(A). *Biggerstaff v. Yamhill County*, 58 Or LUBA 476 (2009).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Where a local code provision applicable to property line adjustments requires a determination that a parcel was "lawfully created" and as part of that determination, the county must determine whether "the creation of [a] parcel was in accordance with applicable laws in effect at the time," it is likely those determinations require the exercise of legal judgment and as such, are land use decisions under ORS 197.015(10). *Davison v. Benton County*, 58 Or LUBA 684 (2009).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Code standards that allow modification of a permit condition of approval where the applicant demonstrates that an "unanticipated circumstance arising from a physical condition or off site" causes a "complication" that "prevents performance of the condition of approval" require interpretation and/or the exercise of legal judgment, and thus decisions under those standards do not fall under the ORS 197.015(11)(b) ministerial exceptions to LUBA's jurisdiction. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

A determination that no local right of appeal exists because the appealed decision did not require discretion and is not a "land use decision" requires interpretation and exercise of legal judgment, and thus does not fall within the ministerial exception to LUBA's jurisdiction at ORS 197.015(11)(b)(B). *Hoschek v. Tillamook County*, 52 Or LUBA 793 (2006).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

A planning commission decision that purports to "correct" a "clerical error" in an earlier subdivision approval by changing the 12 month expiration deadline to a 24 month deadline does not fall within the ministerial exception to LUBA's jurisdiction at ORS 197.015(11)(b)(B), where the planning commission exercised discretion and legal judgment in implicitly determining that it had the

authority to “correct” the deadline after its expiration. *Hoschek v. Tillamook County*, 52 Or LUBA 793 (2006).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Whether a building permit qualifies for the “clear and objective” standards exception to LUBA’s jurisdiction depends on the wording of the standards themselves, not the quality or quantity of the evidence in the record. *Jebousek v. City of Newport*, 51 Or LUBA 93 (2006).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Determining whether “there is reason to believe that a potential geologic hazard does exist” is a discretionary determination, and when that determination is made as part of a decision to issue a building permit, the building permit is a land use decision subject to LUBA review. *Jebousek v. City of Newport*, 51 Or LUBA 93 (2006).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

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).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

A comprehensive plan goal that requires that a city determine whether “there is a reason to believe that a potential [hazard] does exist” and, if so, to require “a site specific investigation by a registered geologist or engineer * * * prior to development” is not a clear and objective standard. Where the city is required to apply that plan goal in issuing a building permit, the building permit does not qualify for the ministerial exception to LUBA’s review jurisdiction over land use decisions and limited land use decision. *Jebousek v. City of Newport*, 50 Or LUBA 724 (2005).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

A decision under ORS 227.175(1), 227.180(1) and implementing local regulations to increase land use application and local appeal fees does not fall within the ministerial exception to LUBA’s jurisdiction, where in doing so the city necessarily makes policy choices whether to charge the maximum allowed under statute or something less, and whether to subsidize some types of applications and appeals, but not others. *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

A local government ordinance that defines “driveways” in terms of “travel distance” is ambiguous and subject to different interpretations where the endpoint for measuring that travel distance is unclear. Therefore the local government exercises policy or legal judgment in making its interpretation, and a decision that interprets the ambiguous ordinance is not a ministerial decision. *Brodersen v. City of Ashland*, 49 Or LUBA 719 (2005).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Where code standards for a lot line adjustment require submission of deeds, a survey drawing, proof that taxes are paid, and verification that the city has accepted any water or sewer line

construction, and the petitioner fails to identify anything about those standards that requires interpretation or the exercise of policy or legal judgment, a decision approving a lot line adjustment under those standards is not a “land use decision” as defined at ORS 197.015(10). *Jewett v. City of Bend*, 48 Or LUBA 16 (2004).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision that approves a “property line adjustment” as that term is defined in ORS chapter 92 will usually fall within the ministerial exception to LUBA’s jurisdiction. However, determining whether a particular lot configuration in fact qualifies as property line adjustment, as opposed to something else such as a partition or replat, may require interpretation and exercise of legal judgment. If so, the decision does not fall within the ministerial exception, and is subject to LUBA’s jurisdiction. *South v. City of Portland*, 48 Or LUBA 555 (2005).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Absent some demonstration that recording a partition plat with the county clerk requires the application of statewide planning goals, comprehensive plan policies or implementing regulations, a county clerk’s act of recording a signed partition plat is not a land use decision or a limited land use decision. *Hammer v. Clackamas County*, 45 Or LUBA 32 (2003).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A county counsel stipulation in a mandamus proceeding zoning of property required the exercise of policy or legal judgment because the legal effect of an LCDC order on the property’s zoning was not clear. *Flying J, Inc. v. Marion County*, 47 Or LUBA 637 (2004).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A floodplain permit does not fall within the ORS 197.015(10)(b) ministerial exception to the definition of “land use decision,” where interpretation is required to determine whether comprehensive plan policies prohibiting “development” on the property prior to master plan approval apply to the floodplain permit and to determine whether the fill approved by the floodplain permit is within the scope of “development” subject to those policies. *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Land use regulations that allow “on-site” signs but prohibit “off-site” signs are not clear and objective, as applied to a proposal to construct a sign advertising a business located on a different parcel than the sign, and a building permit decision approving such a sign as a permitted use is not subject to the ORS 197.015(10)(b)(B) exception to LUBA’s jurisdiction. *Frymark v. Tillamook County*, 45 Or LUBA 486 (2003).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. 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).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the question of whether billboards are allowed in the city is not unequivocally answered by the language of the city code and requires interpretation, a city decision denying a billboard application is not subject to the ministerial exception to the statutory definition of “land use decision.” *West Coast Media v. City of Gladstone*, 43 Or LUBA 585 (2002).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. LUBA will deny a motion to dismiss based on an argument that the challenged decision is a ministerial decision, where the decision interprets and applies a local land use ordinance adopted to implement a statute and that interpretation requires the exercise of discretion. *Demlow v. City of Hillsboro*, 39 Or LUBA 307 (2001).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A city determination that one of two arguably applicable ordinances applies to a building permit requires the exercise of legal judgment, and is a land use decision subject to LUBA jurisdiction. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Even if an implicit exception for nondiscretionary limited land use decisions can be read into the definition at ORS 197.015(12), final plat approval of a planned unit development may be discretionary. Depending upon the particular circumstances of each preliminary plat approval and attendant conditions, the determination of whether final plat approval should be granted may involve the exercise of significant factual and legal judgment. *Bauer v. City of Portland*, 38 Or LUBA 715 (2000).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision to extend a previously granted conditional use permit requires the exercise of policy or legal judgment, and therefore does not qualify as a ministerial decision under ORS 197.015(10)(b)(A), where the decision determines that a code “substantial construction” requirement will be met by obtaining all required permits and that the prior permit can be revived and extended after it has become void. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A planning director’s decision stating that a proposed driving range is a permitted use and not subject to land use review is a “land use decision” subject to LUBA review because the decision is subject to standards that require the interpretation and the exercise of factual judgment to determine whether, under the ordinance, the driving range is a permitted use. *Davis v. City of Ashland*, 37 Or LUBA 224 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A planning director’s letter determining that a driving range is a permitted use is the decision that triggers the 21-day appeal timeline to LUBA, not the date the developer began construction. *Davis v. City of Ashland*, 37 Or LUBA 224 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a county makes a land use decision in which it interprets its zoning ordinance and comprehensive plan and, based on that interpretation, issues a separate decision denying a request for a building permit, the second decision does not apply a comprehensive plan or land use regulation and therefore is not a land use decision under ORS 197.015(10)(a). *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision that disposal of sewage effluent by applying it to farm land constitutes a “utility facility necessary for public service” within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision that disposal of sewage effluent by applying it to farm land constitutes a “farm use” within the meaning of ORS 215.203 requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of “land use decision” provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision that a proposal to transport treated effluent to an EFU-zoned parcel and apply that effluent to poplar trees constitutes a “farm use” within the meaning of ORS 215.283(1)(d) requires the exercise of policy or legal judgment and for that reason the decision does not qualify for the exception to the statutory definition of land use decision provided by ORS 197.015(10)(b)(A) for certain ministerial decisions. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the relationship between two decisions is not clear from the parties’ memoranda, LUBA will deny a motion to dismiss and defer a ruling on jurisdiction until after the parties’ briefs are filed and an opportunity for oral argument is provided. *Columbia Hills Development Co. v. Columbia County*, 35 Or LUBA 737 (1998).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A property line adjustment decision is a land use decision where complex factual and legal circumstances of the case require the exercise of legal judgment. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where an application for a development permit requires a site plan review, is processed according to “Type III” review procedures and involves discretionary application of policy and legal judgment, the local decision is not a ministerial decision under ORS 197.015(10)(b)(A). *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Generally, where a local government approves a street improvement project, and in a later decision awards a contract to build the improvement, the reviewable decision is the initial decision to approve the project. *Knapp v. City of Jacksonville*, 33 Or LUBA 457 (1997).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. When a comprehensive plan provides for converting two specific sections of a street into a collector street under established standards, there is no additional interpretation or policy judgment required, and the award of a construction contract for the project is not a reviewable decision under ORS 197.015(10)(b)(A). *Knapp v. City of Jacksonville*, 33 Or LUBA 457 (1997).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A grading permit, issued under clear and objective standards, is not a land use decision even if the permit substantively violates a prior unappealed farm management plan. *Ceniga v. Clackamas County*, 33 Or LUBA 261 (1997).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A fill permit issued by the city building division is excluded from the definition of a land use decision under ORS 197.015(10)(b)(A) where it involves the application of clear and objective standards that do not require interpretation or the exercise of policy or legal judgment. *Fechtig v. City of Albany*, 31 Or LUBA 441 (1996).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. When an interpretation of the city’s land use regulations and an exercise of legal judgment are required to determine which criteria apply to lot line adjustments, the city’s decision does not fall under the exclusion from LUBA’s jurisdiction stated in ORS 197.015(10)(b). *Thompson v. City of St. Helens*, 30 Or LUBA 339 (1996).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A major partition decision is a land use decision under ORS 197.015(10) where a county’s major partition regulations provide for the exercise of policy or legal judgment, even when the county applies only minimal judgment to the application. *Sparks v. Tillamook County*, 30 Or LUBA 325 (1996).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. That a county is acting to avoid a breach of contract has no bearing on whether its decision to modify a conditional use permit is a discretionary land use decision. *Franklin v. Deschutes County*, 30 Or LUBA 33 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A hearings officer’s decision to approve a zone change and planned unit development is a land use decision. Therefore, a planning department decision not to accept petitioner’s local appeal of that decision is not subject to the ORS 197.015(10)(b)(A) exception to LUBA’s jurisdiction for “ministerial” decisions. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. The exception to LUBA’s jurisdiction in ORS 197.015(10)(b) does not apply where applicable local code standards concerning the timely filing of a local appeal require interpretation and the exercise of legal judgment. *Hick v. Marion County*, 28 Or LUBA 782 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where petitioner’s claim is that a building permit violates clear and objective standards, petitioner fails to establish a basis for LUBA’s jurisdiction over the appeal. *Broderson v. Jackson County*, 28 Or LUBA 645 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Petitioner’s argument that a decision to approve a building permit is a land use decision because the decision requires the application of a LCDC enforcement order fails where the enforcement order does not establish land use standards for the issuance of building permits. *Broderson v. Jackson County*, 28 Or LUBA 645 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where conditions of a prior nonforest dwelling approval do not require a determination of compliance with any discretionary land use standard, the fact that a building permit may only be issued after it is determined that such conditions are satisfied provides no basis for LUBA’s jurisdiction. *Broderson v. Jackson County*, 28 Or LUBA 645 (1995).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Determining whether the local code allows a proposed wastewater treatment facility as part of, or incidental to, the uses that it serves, or whether it requires the proposed wastewater treatment facility to be regulated as a separate use, requires interpretation and judgment. Therefore, the exception to LUBA’s jurisdiction provided by ORS 197.015(10)(b)(A) does not apply. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a planning director exercises discretion in applying the local code and correctly rejecting an attempted local appeal as untimely filed, the decision to reject the attempted local appeal is a land use decision, and the proper disposition of a LUBA appeal challenging that decision is to affirm the decision rather than to dismiss the LUBA appeal. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. The limited land use decisions described by ORS 197.015(12)(b) fall somewhere between (1) outright permitted uses for which approval involves no discretionary review; and (2) uses allowed subject to application of discretionary approval standards that may require denial of the use altogether (as opposed to discretionary approval standards that only regulate the use’s physical characteristics). *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. 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).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A local government decision maker exercises both policy and legal judgment in determining whether the raising of large numbers of pigs in a confined area is a use “similar” to farm uses permitted in an EFU zone. Therefore, such a decision is a land use decision subject to LUBA’s jurisdiction. *Derry v. Douglas County*, 26 Or LUBA 25 (1993).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a local government exercised significant legal and factual judgment in determining whether a proposed dwelling will replace an “existing dwelling,” the exception established by ORS 197.015(10)(b)(B) does not apply, and the challenged decision is a “land use decision” subject to LUBA’s jurisdiction. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A county decision approving a dwelling on a lot or parcel that is a woodlot capable of producing 10,000 dollars or more in average gross annual income, as provided in ORS 215.213(2)(b)(B), is “discretionary” and is a “permit,” as defined by ORS 215.402(4). *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where a determination of whether a local appeal document meets jurisdictional requirements of the local code requires interpretation and the exercise of factual judgment, a local government decision to dismiss the local appeal is not excepted from the definition of “land use decision” under ORS 197.015(10)(b)(A). *Breivogel v. Washington County*, 23 Or LUBA 143 (1992).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. A decision approving a building permit is a land use decision subject to LUBA’s jurisdiction only if the building permit approval decision involves the application of the goals, comprehensive plan or a land use regulation and does not qualify as a ministerial decision under ORS 197.015(10)(b). *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. Where the zoning standards under which conceptual development approval was granted are changed to disallow the use conceptually approved, and standards applicable to a second development approval require the proposed use be allowed in the zone, the uncertainty concerning which standards apply to the second application under ORS 215.428(3), makes approval of second application not subject to the exception to LUBA’s jurisdiction established by ORS 197.015(10)(b)(A). *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception. After 1989 amendments, ORS 197.015(10)(b)(A) and (C) parallel the interpretation of former ORS 197.015(10)(b) expressed in *Doughton v. Douglas County*, 82 Or App 444, 449, 728 P2d 887 (1986), *rev den*, 303 Or 74 (1987). However, the current statutory language may narrow the exception for nondiscretionary decisions expressed in *Doughton*, because it does not expressly

require the exercise of *significant* judgment. *Hollywood Neigh. Assoc. v. City of Portland*, 22 Or LUBA 789 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Where the local code does not contain a definition of “medical clinic,” the exception to LUBA’s jurisdiction provided by ORS 197.015(10)(b)(C) does not apply to a decision that a proposed use is a “medical clinic,” because there is no single “common knowledge” definition of “medical clinic” which can be applied without interpretation or the exercise of factual and legal judgment. *Hollywood Neigh. Assoc. v. City of Portland*, 22 Or LUBA 789 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

A decision is “ministerial” rather than “discretionary” if it does not entail the exercise of any significant legal or factual judgment. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

A city’s determination that a medical waste incinerator is similar to other uses allowed in its General Industrial zone involved sufficient discretion to make it a “permit” as defined by statute. That the determination may be correct has no bearing on whether the determination is a permit. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Whether a proposed dwelling (1) is permitted outright in an EFU zone, (2) is “accessory” to an underlying nonconforming use, and (3) complies with ORS 215.296(1), are determinations which require “interpretation or the exercise of factual, policy or legal judgment” within the meaning of ORS 197.015(10)(b)(A) and (C). *Komning v. Grant County*, 20 Or LUBA 481 (1990).

26.2.6 LUBA Jurisdiction – Land Use Decision: Statutory Test – Ministerial Exception.

Decisions that would otherwise be subject to LUBA review jurisdiction are exempt if they are “nondiscretionary or minimally discretionary applications of established criteria.” *Doughton v. Douglas County*, 82 Or App 444, 728 P2d 887 (1986), *rev den*, 303 Or 74 (1987). *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 651 (1990).