

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A city’s rejection of petitioner’s as-applied challenge of a city’s appeal fee during the city’s proceeding on intervenor’s land use application, and legal challenges to the city’s future assessment of actual attorney’s fees is not excluded from LUBA’s jurisdiction by the “fiscal” exception. However, to the extent petitioner challenges the amount of the actual attorney fees, that challenge is outside the Board’s scope of review because that fee dispute arose after the city issued the fee invoice and after the city made a decision on petitioner’s underlying appeal, and is therefore a “fiscal” decision. The fact that the local record includes the invoice for the actual attorney fees petitioner was charged for his local appeal does not convert the amount of the fees in that invoice into an issue that is reviewable by LUBA. *Nicita v. City of Oregon City*, 78 Or LUBA 463 (2018).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a city adopts an ordinance prohibiting marijuana businesses in the city pursuant to ORS 475B.968(1), the ordinance is not a de facto amendment of the city’s land use code provisions governing “agriculture,” and therefore is not a “land use” decision. *Caudle v. City of Dunes City*, 77 Or LUBA 230 (2018).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a city adopts an ordinance prohibiting marijuana businesses in the city pursuant to ORS 475B.968(1), the city is not required to apply its comprehensive plan provisions or adopt findings addressing those policies. ORS 475B.968 allows the city to enact a prohibition on marijuana businesses and refer that prohibition to the city’s electors for approval, and nothing within that broad grant of authority suggests the legislature intended to subject that grant of authority to review for compliance with local governments’ comprehensive plans. *Caudle v. City of Dunes City*, 77 Or LUBA 230 (2018).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Absent a focused challenge to the authority of the Land Conservation and Development Commission’s to promulgate OAR 660-033-0140, which provides that a decision to extend a permit for development on farm or forest land is not a “land use decision” as defined in ORS 197.015, LUBA will give effect to the rule. *McLaughlin v. Douglas County*, 76 Or LUBA 77 (2017).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Operation of OAR 660-033-0140, which provides that a decision to extend a permit for development on farm or forest land is not a “land use decision” as defined in ORS 197.015, does not turn on whether the extension criteria require the exercise of discretion. *McLaughlin v. Douglas County*, 76 Or LUBA 77 (2017).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where the legislature excludes certain decisions from the statutory definition of “land use decision,” LUBA has no review authority over such decisions under the significant impact test. Similarly, where no party challenges the statutory authority of the Land Conservation and Development Commission (LCDC) to adopt an administrative rule that excludes a decision extending a permit on farm or forest land from LUBA’s jurisdiction, and LUBA applies the rule to conclude that the extension decision is excluded from LUBA’s jurisdiction, LUBA will not consider whether the “significant impacts test” is met. *McLaughlin v. Douglas County*, 76 Or LUBA 77 (2017).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. 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).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a county's code enforcement procedure requires a code enforcement officer to make a preliminary decision regarding whether there is probable cause to believe there is an ordinance violation, that decision is not a final decision that may be appealed to LUBA. Under the county's code enforcement procedure, if the code enforcement officer finds there is probable cause, the first step is to seek voluntary compliance and the next step would be for the county to seek declaratory or injunctive relief in circuit court, where the code enforcement officer would have the burden of proof regarding the ordinance violation. If the code enforcement officer finds there is no probable cause, that is not a final decision either, as a petitioner may continue to request that the county take enforcement action, or petitioner may seek declaratory or injunctive relief in circuit court under ORS 197.825(3), where petitioner would have the burden of proof regarding the ordinance violation. *Robson v. Polk County*, 75 Or LUBA 343 (2017).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Pursuant to ORS 475B.063(3), LUBA lacks jurisdiction over a decision on a request for a land use compatibility statement (LUCS) that involves a petitioner's proposed land use for a retail marijuana license. *George v. Lincoln County*, 75 Or LUBA 438 (2017).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where LUBA concludes that it lacks jurisdiction over an applicant's appeal of an adverse land use compatibility statement, the appeal must either be dismissed or transferred to circuit court if a motion to transfer is filed. LUBA lacks authority to reverse a decision it has no jurisdiction over. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. That a decision on a request for a land use compatibility statement (LUCS) involves the exercise of discretion or interpretation of code language to determine whether the proposed use is permitted outright or requires future land use reviews does not mean that the exclusions at ORS 197.015(10)(b)(H) do not apply. Many LUCS decisions that otherwise fall within the exclusions at ORS 197.015(10)(b)(H) require the interpretation of code language, which is often necessary to determine how to correctly categorize the proposed use. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a county makes a single decision to approve an outdoor mass gathering as defined in ORS 433.735, that decision is excluded from LUBA's jurisdiction under ORS 197.015(10)(d), even if the decision authorizes access roads and other development and that authorization, but for being embodied in a decision approving an outdoor mass gathering, arguably might constitute a land use decision. *Thomas v. Wasco County*, 68 Or LUBA 102 (2013).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A decision that qualifies as an "appropriate zoning classification decision" under ORS 227.160(2)(b) is subject to LUBA review

“in the same manner as a limited land use decision.” ORS 227.175(11)(b). Such decisions are subject to LUBA review without regard to whether they might qualify for the general exclusion from LUBA’s jurisdiction provided by ORS 197.015(10)(b)(A) for land use decisions that are “made under land use standards that do not require interpretation or the exercise of policy or legal judgment.” *Mariposa Townhouses v. City of Medford*, 68 Or LUBA 528 (2013).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 197.015(10)(d) sets out an exception to the statutory definition of “land use decision” for “outdoor mass gatherings,” and certain other gatherings. But the ORS 197.015(10)(d) exception includes an internal exception for agri-tourism. The effect of the exception within an exception is to make decisions authorizing agri-tourism “land use decisions” that are reviewable by LUBA. *Wetherell v. Douglas County*, 67 Or LUBA 214 (2013).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 197.015(10)(d) creates an exception to the ORS 197.015(10)(a) definition of “land use decision” for “[g]athering[s] of fewer than 3,000 persons that [are] not anticipated to continue for more than 120 hours in any three-month period.” Because a decision approving one outdoor music festival limited to fewer than 3,000 persons falls with the ORS 197.015(10)(d) exception, the decision is not a land use decision subject to review by LUBA. *Wetherell v. Douglas County*, 67 Or LUBA 214 (2013).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The legislature did not intend LUBA to exercise jurisdiction to review a decision approving a tax exemption for multiple family housing under ORS 307.600 *et seq.*, as evidenced by the fact that the legislature specifically provided, in ORS 307.631, that denial or termination of a tax exemption for multiple-unit housing is subject to review in circuit court. *Conte v. City of Eugene*, 66 Or LUBA 95 (2012).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A decision that approves a property tax exemption for multiple-family housing under ORS 307.600 *et seq.* is a fiscal decision excluded from LUBA’s jurisdiction, notwithstanding that ORS 307.618 requires a finding that the multiple-family housing “is or will be at the time of development” in conformance with applicable land use regulations, because the decision has only incidental impacts on land use and does not approve or deny any proposed development, which will necessarily be subject to a subsequent decision on a building permit or application for development approval under the applicable land use regulations. *Conte v. City of Eugene*, 66 Or LUBA 95 (2012).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under subsection (3) of ORS 197.825, circuit courts retain jurisdiction “[t]o grant declaratory, injunctive, or mandatory relief in * * * proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations[.]” *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. When a local government takes action to enforce its land use laws, LUBA has exclusive jurisdiction in such circumstances to review any land use decisions a local government may render in enforcing its land use laws, but circuit courts otherwise retain jurisdiction over proceedings that are brought to enforce county land use laws. *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Just as LUBA in reviewing land use decisions to determine whether they should be affirmed, remanded or reversed under ORS 197.835 “has no authority to enforce” local land use laws, circuit courts lack jurisdiction to review local government land use decisions when proceedings are brought in circuit court to enforce land use laws. *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a county has adopted the Oregon Department of Environmental Quality’s noise standards as a county land use regulation, a final county decision that applies those noise standards is a “land use decision,” as that term is defined at ORS 197.015(10)(a). *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A petitioner fails to demonstrate that a decision is a “land use decision” under ORS 197.015(10)(a) where the definition of “lot of record” set out in the city’s zoning code includes five circumstances or categories under which a unit of land may be considered a “lot of record,” determining whether a unit of land is a “lot of record” under most of the five categories does not appear to require the exercise of any discretion at all, and petitioner does not argue that the unit of land falls under the one category that might require the exercise of discretion. *Jacobsen v. City of Winston*, 64 Or LUBA 164 (2011).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under ORS 197.015(10)(d) a decision authorizing an outdoor mass gathering as defined at ORS 433.735 is not a land use decision subject to LUBA’s jurisdiction, but ORS 433.735 provides both a statutory definition and an authorization for counties to adopt a more expansive definition of outdoor mass gathering, and it is unclear whether a decision under a county definition is also excluded from LUBA’s jurisdiction. Even if a decision under a county definition of outdoor mass gathering is not subject to the ORS 197.015(10)(d) exclusion, however, ORS 433.735(5) provides an independent exclusion, by providing for appeal of a county decision to circuit court under either the statutory or a county definition. *Devereux v. Douglas County*, 64 Or LUBA 191 (2011).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. To the extent there is textual ambiguity regarding whether an outdoor mass gathering under a county definition of that term authorized by ORS 433.735 is also “an outdoor mass gathering as defined in ORS 433.735” and thus excluded from LUBA’s jurisdiction under ORS 197.015(10)(d), the legislative history of ORS 197.015(10)(d) indicates that the legislature clearly understood that outdoor mass gatherings under county definitions authorized under ORS 433.735 were outdoor mass gatherings as defined at ORS 433.735. *Devereux v. Douglas County*, 64 Or LUBA 191 (2011).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. OAR 660-033-0140 provides that a decision extending the expiration period for an ORS 215.402 permit decision on farm or forest land is not a “land use decision,” and therefore such an extension decision is not within LUBA’s jurisdiction. *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under ORS 215.429(2), once a petition for writ of mandamus is filed under the 120/150-day rule, the circuit court has exclusive jurisdiction over a permit application and any decision rendered on that permit application. Where a permit decision has been appealed to LUBA and withdrawn by the county for reconsideration

under 197.830(13)(b), and the permit applicant files a petition for writ of mandamus arguing a violation of the 120/150-day rule, the county loses jurisdiction to reconsider the permit decision and LUBA loses jurisdiction as well. However, LUBA will deny a motion to dismiss the appeal where the county has moved to dismiss the mandamus proceeding, contending that the 120/150-day rule only applies to the county's initial permit decision that was appealed to LUBA and not to a reconsidered decision under 197.830(13)(b). In that circumstance the county and LUBA would again have jurisdiction over the permit application and decision if the mandamus proceeding is dismissed, and LUBA will await a final decision on the county's motion to dismiss before taking final action on the applicant's motion to dismiss. *Columbia Riverkeeper v. Clatsop County*, 63 Or LUBA 547 (2011).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. In *Friends of Lincoln County v. Newport*, 5 Or LUBA 346 (1982), LUBA determined that a city decision to collect a \$2,050 appeal and transcript preparation fee to allow a local appeal to proceed was not reviewable as a land use decision because it qualified for the “fiscal decision” exception created by the Court of Appeals in *Housing Council v. City of Lake Oswego*, 48 Or App 525, 617 P2d 655 (1980), *rev dismissed*, 291 Or 878, 635 P2d 647 (1981). *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. In *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995), LUBA held the city's land use appeal fees were “an integral part of the zoning code provisions governing the processing and review of land use applications.” LUBA has relied on that holding in a number of subsequent appeals to reject jurisdictional challenges to appeals of local government decisions that adopt or amend application or appeal fee schedules. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. LUBA has relied on *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995), in a number of decisions to reject jurisdictional challenges to appeals that assert “as-applied” challenges to previously adopted land use permit and appeal fee schedules. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A city decision to charge a subdivision applicant the actual cost of processing his subdivision application is not a land use decision that is subject to review by LUBA, where the city's final decision demanding payment of the actual costs was not made as part of its decision on the merits of the subdivision application and instead postdates that decision on the merits by over one year. The city's later decision to demand payment of the actual cost of processing the subdivision application is a “fiscal” decision, and under the reasoning in *Housing Council v. City of Lake Oswego*, 48 Or App 525, 617 P2d 655 (1980), *rev dismissed*, 291 Or 878, 635 P2d 647 (1981), is not a land use decision subject to LUBA review. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under ORS 197.825(1), LUBA has exclusive jurisdiction to review “land use decisions,” as that term is defined by ORS 197.015(10)(a), unless one of the exclusions set out at ORS 197.015(10)(b) applies. *Dierks v. Jackson County*, 60 Or LUBA 487 (2010).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a development ordinance only requires that the county “consider” a fire district recommendation in ruling on a request to reduce a fire break, and the development ordinance imposes few boundaries on the decision maker’s exercise of discretion in making a decision on the request, 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 fuel break reduction decision is a land use decision. *Dierks v. Jackson County*, 60 Or LUBA 487 (2010).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under ORS 197.825(2)(c)(A), LUBA does not have initial jurisdiction to review a decision by a city with a population over 2,500 to amend its urban growth boundary to add more than 50 acres of land where that decision is submitted to the Department of Land Conservation and Development (DLCD) for review under ORS 197.626. LUBA may later acquire jurisdiction over certain matters addressed in the decision if the director of DLCD transfers those matters to LUBA. *Swalley Irrigation District v. City of Bend*, 59 Or LUBA 52 (2009).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a county adopts an ordinance that amends its comprehensive plan map in conjunction with a city’s urban growth boundary (UGB) amendment, and the county’s ordinance is submitted in conjunction with the city’s UGB amendment to the Department of Land Conservation and Development for review, under ORS 197.825(2)(c)(A), LUBA does not have jurisdiction to review the county’s decision. *Swalley Irrigation District v. Deschutes County*, 59 Or LUBA 192 (2009).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A code provision that states that certain duplex and triplex applications qualify for administrative review without public hearings does not eliminate the need for such duplex and triplex applications to comply with substantive approval standards that would otherwise apply. *Zirker v. City of Bend*, 55 Or LUBA 188 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A county’s statement in a state agency land use compatibility certification of facts about a property’s zoning and the status of a subdivision of that property falls under the ORS 197.015(11)(b)(A) exception to the definition of land use decision because the compatibility statement did not require interpretation or the exercise of policy or legal judgment. *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a county, in response to a Ballot Measure 37 claim, adopts an order that initiates a process to “modify” the existing planning and zoning of a property and later adopts an ordinance that actually changes the plan and zoning map designation for the property, the subsequent ordinance is the county decision that modifies the existing planning and zoning under ORS 197.352(8), and under ORS 197.352(9) such a decision is not a land use decision that LUBA has jurisdiction to review. *DLCD v. Klamath County*, 54 Or LUBA 113 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 92.100(7), which provides that a decision approving a final subdivision or partition plat is not a land use decision or limited land use decision, effectively removes such decisions from LUBA’s jurisdiction. Nothing in the text or

legislative history of ORS 92.100(7) suggests that the exclusion applies only to nondiscretionary final subdivision or partition plat decisions. *Wagon Trail Ranch v. Klamath County*, 54 Or LUBA 654 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The fact that procedures for making limited land use decisions are used for making a decision to approve or deny a final partition plat does not convert that decision into a limited land use decision or override the language of ORS 92.100(7) providing that decisions to approve or deny a final partition plat are not limited land use decisions. *Ehle v. City of Salem*, 54 Or LUBA 688 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 92.100(7) excludes from LUBA’s jurisdiction decisions made by a local government or its designee to approve or deny a final partition plat. *Ehle v. City of Salem*, 54 Or LUBA 688 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 223.314 exempts certain plans that are adopted in support of systems development charges from the statutory definition of “land use decision.” If that exemption is applied literally and broadly, it would exempt a large number of decisions that would otherwise be subject to the statewide planning goals and would otherwise be land use decisions subject to LUBA review. *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. If a local government wants to adopt one plan to comply with ORS 223.309(1) to establish systems development charges and adopt a second plan to satisfy any obligations it may have under the statewide planning goals and local land use laws, ORS 223.309(1) and 223.314 effectively authorize such a bifurcated approach. *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A city decision to adopt a public facilities plan under ORS 223.309(1) and to proceed to adopt and implement systems development charges, before the city has separately adopted a second plan to comply with the city’s obligations under the statewide planning goals and local land use legislation, does not convert the ORS 223.309(1) public facilities plan into a de facto land use decision. Such an ORS 223.309(1) public facilities plan remains a fiscal plan that under ORS 223.314 is not considered a land use decision and is not reviewable by LUBA. *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. LUBA has consistently declined to apply the “fiscal exception” to decisions that involve local land use appeal fees or land use application fees, because such decisions implicate core land use concerns regarding access to and citizen participation in land use reviews. *Sommer v. Josephine County*, 52 Or LUBA 806 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The specific motivation of a county for amending its schedule of appeal and application fees is not determinative of whether the “fiscal exception” to LUBA’s jurisdiction applies. *Sommer v. Josephine County*, 52 Or LUBA 806 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The ORS 197.015(10)(e) exception to LUBA’s jurisdiction for writs of mandamus issued pursuant to ORS 215.429 or 227.179 applies only when the writ is based on an alleged violation of the statutory 120-day deadline for issuing a final decision. A writ of mandamus filed for another reason does not deprive LUBA of jurisdiction over a land use decision approving a manufactured home subdivision, even if the writ involves the same property. *D & B Home Investments v. City of Donald*, 51 Or LUBA 1 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A quasi-judicial decision approving a tentative subdivision plat does not “implement” a systems development charge within the meaning of ORS 223.314, and therefore fall within an exclusion to LUBA’s jurisdiction, simply because the decision imposes a condition of approval that imposes or references system development charges. *D & B Home Investments v. City of Donald*, 51 Or LUBA 1 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Pursuant to ORS 92.100(7) and ORS 197.015(13), LUBA has no jurisdiction over a decision approving or denying an application for final subdivision plat approval that was submitted after June 16, 2005. *Severson v. Josephine County*, 51 Or LUBA 569 (2006).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 223.314 provides a statutory exclusion from the statutory definition of land use decision. But that exclusion only applies to the extent “a plan * * * adopted pursuant to ORS 223.309” is adopted for the limited purpose of supplying the public facility list that is required by ORS 223.309 as a precondition of adopting a systems development charge methodology. *Home Builders Assoc. v. City of Springfield*, 50 Or LUBA 109 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. So long as sewerage facilities recommended in a regional sewerage plan cannot be built until the applicable comprehensive plan is amended to recommend those facilities, the regional sewerage plan may be adopted before the comprehensive plan is amended and the decision to adopt that regional sewerage plan to comply with state and federal environmental regulations and the requirements of ORS 223.309 for adoption of a systems development charge methodology is not a land use decision that is reviewable by LUBA. The reviewable land use decision will be adopted when the corresponding comprehensive plan amendments are adopted. *Home Builders Assoc. v. City of Springfield*, 50 Or LUBA 109 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Goal 14, factors 3 through 7 implicitly require a determination that the sites chosen to be included in an urban growth boundary (UGB) are better than other alternative sites that are also considered for inclusion and rejected. Therefore, a local code provision requiring a demonstration that “the recommended site was better than alternative sites,” does not “go further” or require more than the requirements of Goal 14, and assignments of error concerning that local code provision therefore involve “matters” that fall within the Land Conservation and Development Commission’s exclusive jurisdiction in periodic review. *City of West Linn v. Metro*, 49 Or LUBA 403 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. 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).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. An allegation that a Metropolitan Service District ordinance that amends a regional plan and the urban growth boundary (UGB) is inconsistent with that regional plan is a Goal 2 consistency issue and therefore is a matter that is within the Land Conservation and Development Commission’s exclusive jurisdiction in a pending periodic review proceeding concerning the same ordinance. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. If the Metropolitan Service District’s authority to amend a regional plan to mandate certain zoning protections for industrial lands were solely a question of whether the regional plan itself prohibits such mandates, that question would likely be an issue that is exclusively within the Land Conservation and Development Commission’s exclusive jurisdiction in a pending periodic review of the amendment. However, where the question of whether the regional plan prohibits such mandates is intertwined with the question of whether other legal authorities prohibit such mandates, and LUBA has jurisdiction to consider whether those other legal authorities prohibit such mandates, LUBA also has jurisdiction to consider whether the regional plan prohibits the mandates. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. There is nothing in the language of ORS 197.025(1) and 268.385(1) that imposes a higher obligation on the Metropolitan Service District in performing its coordination obligation than is imposed under the Goal 2 coordination obligation. Therefore, in performing periodic review of a regional plan amendment, the Land Conservation and Development Commission will resolve the question of whether the Metropolitan Service District properly coordinated its decision, and LUBA does not have jurisdiction to consider that issue in a LUBA appeal of the same regional plan amendment. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. 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).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Whether a decision that changes the fee to file local appeals of land use decisions is codified in the zoning ordinance is not dispositive as to LUBA’s jurisdiction under either the statutory definition or the fiscal decision exception. The essential questions are whether the challenged appeal fees (1) “concern” the application of a land use regulation and (2) are an integral part of the zoning code provisions governing the processing and review of land use applications. *Friends of Linn County*, 45 Or LUBA 408 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. When a land use decision involving appeal fees is bundled together with decisions involving other types of fees that standing alone

would not fall within LUBA's jurisdiction, the question of our jurisdiction does not turn on whether the appeal fee is quantitatively a large or small component of the decision viewed as a whole. *Friends of Linn County*, 45 Or LUBA 408 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Local appeal fees implicate core land use concerns regarding access to and citizen participation in land use reviews. Given the integral role appeal fees play with respect to land use reviews, a decision affecting appeal fees is not subject to the fiscal exception to LUBA's jurisdiction, even where the challenged appeal fee is bundled together with a large number of other fee changes that have nothing to do with land use. *Friends of Linn County*, 45 Or LUBA 408 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where the challenged decision is adopted to fulfill a periodic review work task, and the issue before LUBA can be framed as either (1) a matter of compliance with a statute, comprehensive plan or land use regulation or (2) a matter of compliance with a statewide planning goal or administrative rule, LUBA has jurisdiction over the issue only if the statutory, plan or code obligation goes beyond or is different from the obligation imposed by the goal or rule. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. An argument that a county comprehensive plan amendment adopted to fulfill a periodic review work task is inconsistent with a city comprehensive plan provision is an issue that is cognizable as a Goal 2 consistency issue, and thus is an issue that is within LCDC's exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Findings challenges are necessarily derivative of the underlying criteria the findings address. Where the county code requires adoption of findings supporting legislative decisions, whether jurisdiction to review an adequate findings challenge in a legislative decision adopted to fulfill a periodic review work task lies with LUBA or LCDC depends on whether the findings address goal or rule compliance issues subject to LCDC's exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

26. 4 LUBA Jurisdiction – Land Use Decision: Exclusions. A local code requirement for findings demonstrating that legislative decisions are "in the public interest and will be of general public benefit" does not implicate any Goal or rule requirements, and thus a challenge that the local government failed to adopt adequate findings addressing that criterion in adopting a decision to fulfill a periodic review work task is subject to LUBA's exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under OAR 660-033-0140(5) a forest template dwelling permit is valid for four years and can be extended for two additional years. Although OAR 660-033-0140(3) provides that such an extension of a permit for a forest template dwelling "is not subject to appeal as a land use decision," a county decision that grants a one-year extension of a forest template dwelling two years after it was issued, pursuant to general local legislation that allows permits to be extended, is a land use decision and is reviewable by LUBA. *Butori v. Clatsop County*, 45 Or LUBA 677 (2003).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The scope of the “fiscal exception” to statewide land use planning standards generally and LUBA’s jurisdiction in particular is not well defined, but an amendment to the fee charged to file a local appeal under a zoning ordinance does not qualify as a fiscal exception, notwithstanding that the decision adopting the fee change is not codified as part of the zoning ordinance. *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 270 (2002).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 197.825(2)(b), which states that LUBA’s jurisdiction is subject to the statutes governing the Court of Appeals’ review of LUBA decisions, simply clarifies that LUBA no longer has jurisdiction over an appeal once a party seeks judicial review of LUBA’s final order in that appeal. ORS 197.825(2)(b) does not require that LUBA consider whether the Court of Appeals might lack constitutional authority to review LUBA’s final order, or require that LUBA dismiss the appeal if it concludes that such is the case. *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 524 (2002).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. In lieu of judicial review by the Court of Appeals of an order of the Columbia River Gorge Commission regarding any action of a county pursuant to the Columbia River Gorge Scenic Area Act, the county’s decision may be appealed to LUBA. Such an appeal must be filed within 21 days after the Columbia River Gorge Commission decision becomes final and LUBA may not consider any issue concerning interpretation or implementation of the Columbia River Gorge Scenic Act. *Lois Thompson Housing Project v. Multnomah County*, 37 Or LUBA 580 (2000).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. An appeal to LUBA of a county decision under the Columbia River Gorge Scenic Act, prior to the date the Columbia River Gorge Commission issues a final decision reviewing the county decision, is premature and will be dismissed. Appellate jurisdiction for review of such a county decision in the first instance lies with the Columbia River Gorge Commission. *Lois Thompson Housing Project v. Multnomah County*, 37 Or LUBA 580 (2000).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under *Murphy Citizens Advisory Com. v. Josephine County*, 325 Or 101, 934 P2d 415 (1997), a land use decision otherwise within LUBA’s jurisdiction is not removed from LUBA’s purview, pursuant to ORS 197.825(3), by a court order that is not a peremptory writ of mandamus. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. An indication on the notice of adoption furnished to DLCD under ORS 197.610(1) that the Statewide Planning Goals do not apply to a proposed plan or code amendment or a new land use regulation is a ministerial act without independent significance, not a land use decision subject to LUBA’s jurisdiction. *Petersen v. Columbia County*, 33 Or LUBA 253 (1997).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The jurisdictional bar of ORS 197.015(10)(d) applies to both alternative and peremptory writs of mandamus, and excludes a local

government decision issued in response to an alternative writ of mandamus from the definition of “land use decision.” *Arnold v. Columbia County*, 32 Or LUBA 237 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where a circuit court issues an order requiring the county to approve four land use applications, and that order is the culmination of a mandamus proceeding, the county’s subsequent approvals of the applications are issued “in response to a writ of mandamus” for purposes of the jurisdictional bar of ORS 197.015(10)(d)(B), notwithstanding the fact that the court’s order is not itself a writ of mandamus. *Estremado v. Jackson County*, 32 Or LUBA 206 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 197.825(2)(c) excludes from LUBA’s jurisdiction matters addressed during periodic review by DLCDC and LCDC. *Mazeski v. Wasco County*, 31 Or LUBA 126 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The Land Use Board of Appeals has no jurisdiction over expedited land division approvals. Jurisdiction for review of expedited land divisions rests instead with the Court of Appeals. *Richey Lane Neigh. Assoc. v. Washington County*, 31 Or LUBA 102 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. The Oregon Supreme Court has exclusive jurisdiction over decisions that involve the “project” component of the Westside Corridor Project. *Kane v. Tri-County Metro Trans. Dist.*, 31 Or LUBA 41 (1996).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Notwithstanding the 1991 legislature’s failure to amend ORS 197.825(c), which states exclusions from LUBA’s jurisdiction, to refer to the statutes where the new periodic review process is codified, LUBA reads ORS 197.825(c) as if it were so amended. *Mazeski v. Wasco County*, 30 Or LUBA 442 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under ORS 197.644 and ORS 197.825(c), issues arising during periodic review that involve compliance with the goals must be addressed and decided by LCDC, but other issues may be appealed to LUBA. *Mazeski v. Wasco County*, 30 Or LUBA 442 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under OAR 660-25-040(1) and (2), LUBA retains jurisdiction during periodic review over matters that do not involve compliance with the Statewide Planning Goals. *Mazeski v. Wasco County*, 30 Or LUBA 442 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Even if county actions could otherwise be construed to be land use decisions, where the actions are mandated by a circuit court order in response to a writ of mandamus, they are not land use decisions over which LUBA has jurisdiction. *Murphy Cit. Advisory Committee v. Josephine County*, 30 Or LUBA 28 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Under OAR 661-10-010(3), a document containing findings of fact and conclusions of law that is signed by the mayor and attested by the city recorder is a final decision, but if the city has no authority to take the action reflected in the decision, the final decision is not a land use decision. Subsequent adoption with

authority is a land use decision appealable to LUBA. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A zoning code fees chapter which is an integral part of the zoning code provisions governing the processing and review of land use applications is not a purely fiscal ordinance, and its application to a local appeal of a hearings officer’s decision on a land use application is not excepted from review by LUBA. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. A local code chapter which allows a subdivider to recoup part of the costs of installing sewer improvements for a subdivision is purely a fiscal ordinance, and a decision applying such a fiscal ordinance is not a land use decision subject to review by LUBA. *The Petrie Company v. City of Tigard*, 28 Or LUBA 535 (1995).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Local government decisions granting design review approval for segments of a light rail transit line do not adopt or amend a city or county public facility plan and, therefore, are not excluded from being considered “land use decisions” under ORS 197.712(2)(e). *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. ORS 517.890 provides that appeals of provisional surface mining permits are governed by the provisions of “ORS 183.310 to 183.550 for appeals from orders in contested cases.” Therefore, regardless of whether contested case procedures were observed in all respects during DOGAMI proceedings governed by ORS 183.480(2) and 183.482, jurisdiction to review DOGAMI’s decision lies with the court of appeals, not LUBA. *Hood River Sand, Gravel & Read-Mix v. DOGAMI*, 25 Or LUBA 668 (1993).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. If a single legislative decision *both approves* plan and land use regulation amendments with regard to some Goal 5 resource sites and *denies* such amendments with regard to other sites, such a legislative decision would not qualify as a decision from which an appeal to this Board is foreclosed under ORS 197.830(2) and 197.620(1). *ODOT v. Klamath County*, 25 Or LUBA 761 (1993).

26.4 LUBA Jurisdiction – Land Use Decision: Exclusions. Where the challenged decision is a governing body’s directive to the county counsel to file a complaint in circuit court to enforce zoning regulations pursuant to ORS 197.825(3)(a), the challenged decision is not one over which LUBA has review authority. *Wygant v. Curry County*, 22 Or LUBA 110 (1991).