

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. ORS 215.429(2) and ORS 197.015(10)(e)(B) appear to divest LUBA of jurisdiction over local government decisions issued after a petition for a writ of mandamus has been filed. Where a mandamus proceeding regarding a land use application and a LUBA appeal of the local government’s decision on the same application are simultaneously pending, LUBA will grant a continuance of the 77-day period for issuance of its final opinion under ORS 197.830(14) until the mandamus proceeding has concluded. Proceeding with the LUBA appeal could result in conflicting decisions, and therefore possibly a “miscarriage of justice” under ORS 197.840(2)(a). *Kine v. Deschutes County*, 79 Or LUBA 1035 (2019).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. It would be inconsistent with sound principles of judicial review, ORS 197.805, for LUBA to resolve a constitutional challenge to the procedure a city uses to approve an annexation, in a direct appeal of the city decision approving the annexation, when the same issue is pending before a circuit court in a writ of mandamus proceeding between the same parties, seeking to compel the city to approve the annexation under a different procedure. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. A circuit court order that requires the two owners of a common tract to enter into an agreement with each other to pay taxes and maintenance costs does not preclude a county from interpreting a partition condition of approval to require one or both tract owners to enter into separate agreements with the county to ensure maintenance of the common tract, or obligate the county to interpret the condition of approval to require the two owners to enter into an agreement with each other. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. A remedy that would remove the matter entirely from LUBA’s review, such as requesting that a circuit court vacate a judgment related to a county land use decision, is not a remedy available “by right” that a petitioner must exhaust prior to seeking LUBA’s review over the related land use decision. *Rogue Advocates v. Jackson County*, 74 Or LUBA 38 (2016).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. While a circuit court has exclusive authority to modify a 1976 decree recognizing a vested right to development, where in 2013 the applicant seeks county approval to alter or expand that vested right and the county enters into a stipulation with the applicant approving the proposed alteration or expansion, that the circuit court agrees to modify the 1976 decree to reflect the stipulation does not change the fact that the stipulation itself is an alteration or expansion of a nonconforming use, and hence a land use decision subject to LUBA’s exclusive jurisdiction. *Rogue Advocates v. Jackson County*, 74 Or LUBA 38 (2016).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. LUBA lacks authority to review a circuit court order or action. *Rogue Advocates v. Jackson County*, 74 Or LUBA 38 (2016).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Where a petition for writ of mandamus to compel a decision approving a permit application was filed with the circuit court

before the earliest date on which the county took action to reduce its final decision to writing, the circuit court has exclusive jurisdiction regarding the permit application. *Rogue Advocates v. Josephine County*, 73 Or LUBA 98 (2016).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Where a petitioner’s notice of intent to appeal a decision was filed at LUBA after the board of county commissioners was unable to take action on a local appeal of a planning director’s decision that approved a permit application, but before the board of county commissioners reduced its decision to writing, the notice of intent to appeal was filed prematurely. Where the permit applicant files a petition for writ of mandamus more than 14 days after the board of commissioners’ hearing at which they failed to take action, and before the board of commissioners approved the minutes of that hearing, the circuit court has exclusive jurisdiction regarding the permit application, and LUBA does not have jurisdiction over the appeal. ORS 215.429(2) and (4). *Rogue Advocates v. Josephine County*, 73 Or LUBA 98 (2016).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. A stipulated agreement between a local government and a landowner to resolve a land use dispute can concern the application of land use regulations, and thus constitute a “land use decision” as defined at ORS 197.015(10)(a), even in circumstances where the stipulated agreement is the basis to resolve a related action in circuit court. *Rogue Advocates v. Jackson County*, 73 Or LUBA 382 (2016).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. LUBA has exclusive jurisdiction to review appeals of a land use decision, in order to resolve the parties’ arguments regarding whether the decision complies with applicable land use standards. Where a circuit court accepts the stipulated agreement of a county and a property owner to resolve a civil proceeding between the parties, the circuit court does not engage in any kind of review of the stipulation against land use standards, and the circuit court’s acceptance of the stipulation does not necessarily mean that the stipulation is not a land use decision subject to LUBA’s review. *Rogue Advocates v. Jackson County*, 73 Or LUBA 382 (2016).

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

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. 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).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. ORS 227.179(2) provides that upon filing a petition for writ of mandamus, “jurisdiction for all decisions regarding the application * * * shall be with the circuit court.” Therefore, after petitioner filed a petition for writ of mandamus in circuit court arguing that the city violated the 120-day requirement of ORS 227.178(1), the circuit court has exclusive jurisdiction over the application, and the city lacks jurisdiction thereafter to issue a decision regarding the application. *Stewart v. City of Salem*, 61 Or LUBA 77 (2010).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Because ORS 227.179(2) divests a city from jurisdiction to issue a decision “regarding the application” after a petition for writ of mandamus is filed, and LUBA’s review of the merits of that post-writ decision would also result in a decision “regarding the application,” ORS 227.179(2) also divests LUBA of jurisdiction to review the city’s post-writ decision. *Stewart v. City of Salem*, 61 Or LUBA 77 (2010).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Where petitioner filed a writ of mandamus action against the city for allegedly failing to issue a permit decision within 120 days of the date the application was complete, and an appeal of the circuit court decision denying the writ is pending before the Court of Appeals, LUBA will suspend petitioner’s appeal of the city’s post-writ decision denying the permit pending resolution of the Court of Appeals mandamus proceeding, in the interest of judicial economy and consistent with sound principles of judicial review. *Stewart v. City of Salem*, 61 Or LUBA 487 (2010).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. The jurisdiction of the circuit courts to enforce conditions of approval is not relevant where no enforcement action has been brought by the local government to enforce conditions of approval. *Just v. Linn County*, 59 Or LUBA 233 (2009).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. A circuit court decision in an unrelated case under Ballot Measure 37 based on stipulated facts is not binding on the county or LUBA in a later proceeding under a different Ballot Measure 37 claim where the relevant facts are disputed. *Reeves v. Yamhill County*, 55 Or LUBA 452 (2007).

26.8 LUBA Jurisdiction – Statute of Ultimate Repose. When a local government makes a statutory permit decision without providing a hearing as required by ORS 197.763(1), the local government has not provided a required hearing under ORS 197.830(6)(b) and the three-year statute of ultimate repose does not apply. *Michaels v. Douglas County*, 53 Or LUBA 16 (2006).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. 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).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. When a local government enforces its own land use regulations through its own procedures, those actions may result in land use decisions that can be appealed to LUBA, and ORS 197.825(3)(a) does not divest LUBA of jurisdiction. When a local government decides to pursue enforcement of its local land use regulations in circuit court pursuant to ORS 197.825(3)(a), however, jurisdiction properly lies with the circuit court, and the determination to pursue enforcement in circuit court is not a land use decision. *Johnston v. Marion County*, 51 Or LUBA 250 (2006).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. When a local government makes a decision to enforce its regulations or not to enforce its regulations *in circuit court*, that decision of where to contest (or not contest) the land use issues is not a land use decision as defined by ORS 197.015(10). Conversely, when a local government makes a decision to enforce its regulations (or that no violation exists) *at the local level*, that decision may be a land use decision subject to our review, provided it meets the statutory definition of a land use decision. *Johnston v. Marion County*, 51 Or LUBA 250 (2006).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Where a local government has adopted a generally applicable procedure under which it corrects violations of a variety of local laws by filing actions in circuit court, a local government decision that an existing use of property does not constitute a violation of its zoning ordinance that would justify filing a circuit court action under that procedure is not a land use decision. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. An interpretation made by county counsel in a stipulated dismissal in a circuit court mandamus proceeding is not entitled to deference under ORS 197.829(1). *Flying J. Inc. v. Marion County*, 49 Or LUBA 28 (2005).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. 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).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. A county counsel stipulation in a mandamus proceeding that purports to determine the zoning of property is in essence a declaratory ruling interpreting an ambiguous ordinance concerning the zoning of property and is a final determination subject to LUBA’s jurisdiction. *Flying J, Inc. v. Marion County*, 47 Or LUBA 637 (2004).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Under ORS 197.825(3)(a), a local government may elect to enforce its land use regulations, and if such an enforcement action is filed in circuit court, the court has jurisdiction to consider any land use issues that might arise. *Yost v. Deschutes County*, 37 Or LUBA 653 (2000).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. A local government decision not to institute action in circuit court to enforce its land use regulations is not itself a land use decision, provided the local government’s decision is not rendered pursuant to a local procedure that necessarily leads to a land use decision, as defined by ORS 197.015(10)(a). *Yost v. Deschutes County*, 37 Or LUBA 653 (2000).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Where a local government’s land use regulations make it clear that staff determinations describing the uses to which property may be put are informal decisions rather than final county decisions, and those decisions are rendered outside formal local government land use procedures for decision making and declaratory rulings, such decisions do not constitute land use decisions that may be appealed to LUBA. *Yost v. Deschutes County*, 37 Or LUBA 653 (2000).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. LUBA does not have jurisdiction over an appeal from a circuit court decision arising from a local government code enforcement proceeding. *Reeves v. City of Wilsonville*, 35 Or LUBA 253 (1998).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. LUBA does not have jurisdiction to enforce a circuit court injunction requiring that a structure be reduced in size. *Femling v. Coos County*, 34 Or LUBA 328 (1998).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. 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).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. 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).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. 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).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. The existence of a writ of mandamus remedy in circuit court under ORS 227.178(7) for delay in processing an application

does not affect either the city's review of the application or LUBA's jurisdiction if the remedy is not exercised. *Sullivan v. City of Woodburn*, 31 Or LUBA 192 (1996).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. When a petition for writ of mandamus is filed in circuit court pursuant to ORS 227.178(7), the city is divested of any jurisdiction to render a land use decision. When the circuit court issues the writ of mandamus, ordering the city to approve the underlying application, the city's order is not a land use decision over which LUBA has jurisdiction. *Milks v. City of Eugene*, 29 Or LUBA 502 (1995).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Where a mandamus proceeding seeking approval of a permit application under ORS 215.428(7) is pending, it is in the interest of judicial economy and consistent with sound principles governing judicial review, to suspend a LUBA appeal pending the outcome of the circuit court proceeding. *Cascade Pumice, Inc. v. Deschutes County*, 28 Or LUBA 787 (1995).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. If a land use decision is made in a local government proceeding to enforce its land use regulations, under ORS 197.825(1) LUBA has exclusive jurisdiction for initial review of that land use decision. If no appeal to LUBA is filed, or after any review by LUBA is complete and the local government's decision is affirmed, the local government may then seek to enforce its decision in a circuit court proceeding under ORS 197.825(3)(a). *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. Circuit court jurisdiction to grant declaratory relief does not include jurisdiction to make a land use decision in the process of granting declaratory relief. The appropriate local government must render any required land use decisions. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. If a circuit court transfers an appeal to LUBA under ORS 19.230(5), and LUBA's jurisdiction is contested, LUBA must determine whether it has jurisdiction over the challenged decision. If LUBA determines it has jurisdiction, there is no jurisdictional dispute to refer to the court of appeals. *Kaady v. City of Cannon Beach*, 26 Or LUBA 614 (1993).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. After a mandamus proceeding has been initiated pursuant to ORS 215.428(7), a county retains jurisdiction to make a "land use decision" on a pending permit application at any time before the circuit court issues a final judgment in the mandamus proceeding. Although made while circuit court mandamus proceedings are pending, such a "land use decision" is reviewable by LUBA under ORS 197.825(1). *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 507 (1993).

26.8 LUBA Jurisdiction – Effect of Circuit Court Proceedings. A stipulation between county officials and a permit applicant, entered into as part of circuit court mandamus proceedings under ORS 215.428(7), in which the county promises it will subsequently issue the requested permit subject to certain conditions, is not a land use decision subject to LUBA's review. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 507 (1993).