

27.9.1 LUBA Procedures/Rules – Stays – Generally. A county’s claim that the issuance of a stay would violate its constitutionally protected property rights by creating a pesticide spray buffer on county property misapprehends the underlying legal issue where the proposed stay seeks to stop construction in order to prevent probable, irreparable harm to a petitioner’s property, not to authorize the petitioner to take any action that would affect the county’s property rights. *Schrepel v. Yamhill County*, 81 Or LUBA 1067 (2020).

27.9.1 LUBA Procedures/Rules – Stays – Generally. LUBA will grant an interim stay of a challenged decision pending the local government’s response to the petitioner’s motion for stay where the motion alleges that, if the stay is not granted, (1) irreparable injury from construction authorized by the challenged decision will occur to wetlands and/or a riparian area, and a salmonid-bearing stream; (2) irreparable injury will occur to the petitioner due to the presence of construction workers adjacent to the petitioner’s farm and the consequent prohibition on the petitioner spraying pesticides on certain areas of their farm due to pesticide labeling requirements; and (3) the petitioner will be harmed by litter and trash from construction activities adjacent to their farm entering his farm, contaminating their hazelnut crop, and jeopardizing their U.S. Department of Agriculture food safety certifications. *Van Dyke v. Yamhill County*, 81 Or LUBA 1032 (2020).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Where a petitioner moves to stay a decision that rezones property from Open Space/Public to Urban High Density Residential and limits the uses that may be approved on a portion of the property, even if LUBA (1) assumes that the property contains irreplaceable trees and natural resources; (2) assumes that a site plan review application is pending before the city that would allow development of housing on the property, including tree removal; (3) concludes that the petitioner has adequately specified the injury they will suffer and that the injury is one that cannot be compensated adequately in money damages; and (4) assumes that the injury is substantial and unreasonable, LUBA will deny the motion for stay where the decision itself does not allow any development or tree removal and where the petitioner has not established that destruction of any trees is probable, rather than merely threatened or feared, in the absence of a stay. *Crowley v. City of Hood River*, 80 Or LUBA 1008 (2019).

27.9.1 LUBA Procedures/Rules – Stays – Generally. OAR 661-010-0068 does not provide authority for LUBA to stay an appeal that has been filed at LUBA. Rather, OAR 661-010-0068 provides authority for LUBA to grant a stay of the challenged land use decision or limited land use decision during the pendency of the LUBA appeal, if LUBA determines in its discretion that the requirements of the rule are satisfied. *Altamont Homeowners’ Association v. City of Happy Valley*, 76 Or LUBA 459 (2017).

27.9.1 LUBA Procedures/Rules – Stays – Generally. A motion for stay must include a statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error and specifying how the movant will suffer irreparable injury if a stay is not granted. *Rogue Advocates v. Josephine County*, 71 Or LUBA 409 (2015).

27.9.1 LUBA Procedures/Rules – Stays – Generally. LUBA does not have the authority to stay a decision that is not the subject of an appeal. *Central Oregon Landwatch v. City of Bend*, 66 Or LUBA 448 (2012).

27.9.1 LUBA Procedures/Rules – Stays – Generally. The fact a federal agency has issued a special use permit for construction of a project on federal land or that a state agency has issued a permit for work in wetlands does not prevent LUBA from exercising the authority that the legislature has given to LUBA to stay a local government land use decision, or specific portions of a land use decision. *Central Oregon Landwatch v. City of Bend*, 66 Or LUBA 448 (2012).

27.9.1 LUBA Procedures/Rules – Stays – Generally. LUBA will not grant a motion for expedited briefing on a motion for stay where it appears the motion for stay is not likely to be granted, because the motion for stay does not adequately establish that the challenged decision falls under the ORS 197.015(10) definition of “land use decision” and it appears that the notice of intent to appeal may not have been timely filed. *Nyman v. City of Hillsboro*, 59 Or LUBA 533 (2009).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Allegations that blowing soil from grading activities will disturb neighbors and impede traffic are inadequate to demonstrate that petitioner will suffer irreparable injury if the stay is not granted. Allegations that the same activities will irreparably harm migrating wildlife are unfounded, where the record indicates that the Oregon Department of Fish and Wildlife found that a conditional use permit for a non-farm dwelling complies with the county’s Goal 5 ordinance. *Ott v. Lake County*, 53 Or LUBA 633 (2007).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Where respondents’ response to a motion for stay include a motion to dismiss for lack of jurisdiction, petitioners are entitled under LUBA’s rules to 14 days to respond in writing to the jurisdictional challenge. However, where the motion for stay is sought to stop excavation and grading that will be completed within a few days and LUBA agrees with respondents that petitioners fail to demonstrate that the excavation and grading will result in irreparable injury, LUBA will issue an order on the motion for stay in advance of petitioners’ written response to respondents’ jurisdictional challenge. *Jaqua v. City of Springfield*, 45 Or LUBA 713 (2003).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Absent some law to the contrary, appeal to LUBA does not have the effect of staying the appealed permit decision or tolling a one-year expiration period imposed on the permit by local rule. *Rest Haven Memorial Park v. City of Eugene*, 44 Or LUBA 231 (2003).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Demonstration of irreparable injury generally requires a showing that, if a stay is not granted, the decision will authorize destruction or injury of unique historic or natural resources, or other interests that cannot be practicably restored or adequately compensated for once injured or destroyed. *Roberts v. Clatsop County*, 43 Or LUBA 577 (2002).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Petitioners fail to demonstrate that failure to stay proposed development of condominiums on a golf course will cause irreparable injury, where there is undisputed evidence that, if petitioner prevails, any construction can be removed and the site restored to a golf course fairway. *Roberts v. Clatsop County*, 43 Or LUBA 577 (2002).

27.9.1 LUBA Procedures/Rules – Stays – Generally. LUBA lacks statutory authority to render

an advisory determination that code amendments adopted in the challenged land use decision are not effective. Whatever authority LUBA has to impact the effectiveness of such amendments, pending issuance of LUBA's final decision on the appeal, can only be exercised in the context of a motion to stay under ORS 197.845. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 553 (2001).

27.9.1 LUBA Procedures/Rules – Stays – Generally. ORS 197.845(3) authorizes an award of attorney fees when a quasi-judicial decision for which a stay has been granted is affirmed by LUBA. However, the attorney fees recoverable under ORS 197.845(3) are limited to attorney fees related to the stay. *Walton v. Clackamas County*, 34 Or LUBA 829 (1998).

27.9.1 LUBA Procedures/Rules – Stays – Generally. ORS 197.845(3) authorizes an award of attorney fees when a quasi-judicial decision for which a stay has been granted is affirmed by LUBA. Where LUBA dismisses the appeal, an award of attorney fees is not authorized by ORS 197.845(3). *Walton v. Clackamas County*, 34 Or LUBA 829 (1998).

27.9.1 LUBA Procedures/Rules – Stays – Generally. LUBA does not have authority to stay a decision that is not the subject of an appeal. LUBA cannot preclude a local government from making a land use decision, even when the anticipated decision will address issues that arise from a decision that is being challenged before the Board. *Dept. of Transportation v. Douglas County*, 34 Or LUBA 720 (1998).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Once LUBA has issued a “final order” pursuant to ORS 197.830(14), review jurisdiction rests with the Court of Appeals, and LUBA will dissolve a previously issued stay of a challenged local government decision. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

27.9.1 LUBA Procedures/Rules – Stays – Generally. That vacant historic buildings are in poor condition with regard to plumbing, wiring and exterior paint, and are difficult to protect from trespass and vandalism, does not present a sufficient threat to public health and safety for LUBA to exercise its discretion under ORS 197.845(1) to deny an otherwise warranted stay of a challenged decision allowing the historic buildings to be demolished. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 581 (1995).

27.9.1 LUBA Procedures/Rules – Stays – Generally. LUBA will not deny an otherwise meritorious stay of a challenged decision solely because the applicant alleges it will suffer economic harm due to delay, especially where at least some of applicant's damages are self-inflicted, in that applicant made financial commitments dependent on land use approval before obtaining final local government land use approval. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 581 (1995).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Judicial review of LUBA decisions is governed solely by ORS 197.850. ORS 197.850 does not authorize LUBA to consider petitions for reconsideration or to stay its final opinions and orders. *DLCD v. Klamath County*, 26 Or LUBA 589 (1993).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Under ORS 197.845(1) and OAR 661-10-068(1)(c), LUBA is authorized to stay a land use decision pending its review if petitioner demonstrates (1) a colorable claim of error in the decision under review, and (2) that petitioner will suffer irreparable injury if the stay is not granted. *Marson v. Clackamas County*, 22 Or LUBA 804 (1991).

27.9.1 LUBA Procedures/Rules – Stays – Generally. Absent a stay, an appealed local government decision remains valid and effective during review by LUBA and the appellate courts, until a final appellate judgment reversing or remanding the decision is issued. *Blatt v. City of Portland*, 21 Or LUBA 337 (1991).

27.9.1 LUBA Procedures/Rules – Stays – Generally. LUBA is authorized to stay a land use decision pending review, if the petitioner demonstrates (1) a colorable claim of error in the decision under review, and (2) that the petitioner will suffer irreparable injury if the requested stay is not granted. *Wissusik v. Yamhill County*, 19 Or LUBA 561 (1990).