

28.11 LUBA Scope of Review – Effect of Ballot Measure 37 Waiver (ORS 197.352). LUBA has jurisdiction to review decisions that post-date and rely on Ballot Measure 37 waivers, if those decisions apply land use laws that were not waived under Ballot Measure 37. However, in those appeals LUBA’s scope of review does not include challenges to the underlying Ballot Measure 37 waiver. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

28.11 LUBA Scope of Review – Effect of Ballot Measure 37 Waiver (ORS 197.352). Decisions under ORS 197.352(8) about whether land use laws should be or can be waived under Ballot Measure 37 are not land use decisions and are not reviewable by LUBA. But where questions arise about the scope of previously issued Ballot Measure 37 waivers in subsequent land use decisions that rely on those Ballot Measure 37 waivers, LUBA’s scope of review includes resolving any ambiguities about the scope of a previously issued Ballot Measure 37 waiver. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

28.11 LUBA Scope of Review – Effect of Ballot Measure 37 Waiver (ORS 197.352). LUBA will remand a decision approving a subdivision pursuant to a Ballot Measure 37 waiver where the county fails to address arguments raised below that the subdivision is inconsistent with a 1959 subdivision ordinance that predated the claimants’ date of acquisition and that was not waived under the state and local waivers. *Reeves v. Yamhill County*, 55 Or LUBA 452 (2007).

28.11 LUBA Scope of Review – Effect of Ballot Measure 37 Waiver (ORS 197.352). Where the Ballot Measure 37 claimant dies prior to receiving development approval and the property is transferred by operation of law to his heirs, the county errs in approving development on land no longer owned by the Ballot Measure 37 claimant, pursuant to waivers that grant only the claimant the right to develop the property free of the goals, statutes and rules specified in the waiver. *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008).

28.11 LUBA Scope of Review – Effect of Ballot Measure 37 Waiver (ORS 197.352). Where the state specifically waives only Goal 3 and related statutes and administrative rules, an argument that the state should also have waived Goals 7, 11 and 14 is beyond LUBA’s scope of review and must be asserted in a different forum. The only question LUBA may decide is which goals and regulations the state actually waived. *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008).

28.11 LUBA Scope of Review – Effect of Ballot Measure 37 Waiver (ORS 197.352). LUBA has authority to interpret ORS 197.352, or any other statute, as may be necessary in the context of reviewing a land use decision that is subject to LUBA’s jurisdiction. *Welch v. Yamhill County*, 55 Or LUBA 697 (2007).