

1 Opinion by Sherton.

2 **INTRODUCTION**

3 ORS 275.320 allows a county board of commissioners, by
4 order, to designate real property acquired by the county as
5 "county forests, public parks or recreational areas * * *."
6 On October 21, 1970, the Columbia County Board of
7 Commissioners adopted an order pursuant to ORS 275.320,
8 designating a 292-acre parcel acquired by the county as a
9 public park (hereafter 1970 order). That property is known
10 as Carcus Creek County Park.

11 On September 30, 1992, the board of commissioners
12 adopted an order redesignating an approximately 240-acre
13 portion of Carcus Creek County Park as county forest
14 (hereafter 1992 order). The 1992 order states it amends the
15 1970 order, which it describes as "dated October 21, 1970
16 and recorded in Book 279, pages 210 and 211 of the Columbia
17 County Commissioners' Journal * * *." Record 12. The 1992
18 order also states that proceeds from any timber sales on the
19 240-acre tract shall be placed in the county park fund and
20 dedicated to maintenance and development of the county park
21 system.

22 On September 22, 1993, the board of commissioners
23 adopted an order amending the 1992 order (hereafter 1993
24 order). The 1993 order recites that by the 1992 order the
25 board of commissioners redesignated certain property as
26 county forest, but that "it is necessary to amend [the 1992

1 order] to correct the reference to the Columbia County
2 Commissioners' Journal." Record 9. The 1993 order then
3 repeats the operative provisions of the 1992 order, save
4 that it describes the amended 1970 order as "dated
5 October 21, 1970 and recorded in Book 179, pages 210 and 211
6 of the Columbia County Deed Records, and filed in Book T,
7 pages 826 and 827 of the Columbia County Commissioners'
8 Journal * * *." (Provisions different from those of 1992
9 order emphasized.) Record 9.

10 Petitioners filed their notice of intent to appeal with
11 LUBA on October 12, 1993. The notice of intent to appeal
12 identifies the county decision challenged as entitled "'In
13 the Matter of Designating Certain Lands as County Forest,'
14 Order No. 235-93 (Amending Order No. 251-92)." Notice of
15 Intent to Appeal 1. This is the title of the 1993 order.

16 **MOTION TO DISMISS**

17 The county moves to dismiss this appeal, contending the
18 challenged 1993 order is not a "land use decision" subject
19 to LUBA review.¹ The county argues the 1993 order does not
20 involve the adoption, amendment or application of the
21 Statewide Planning Goals, the Columbia County Comprehensive
22 Plan (CCCP), or the Columbia County Zoning Ordinance (CCZO)

¹The county's motion to dismiss actually contends neither the 1992 order
nor the 1993 order is a land use decision subject to LUBA review. However,
because petitioners' notice of intent to appeal clearly identifies the 1993
order, and not the 1992 order, as the subject of their appeal, we do not
address the county's arguments concerning whether the 1992 order is a land
use decision.

1 and, therefore, is not a "land use decision," as that term
2 is defined in ORS 197.015(10). The county further argues
3 that the subject property was redesignated as county forest
4 under ORS 275.320 by the 1992 order. According to the
5 county, the only effect of the challenged 1993 order was to
6 amend the 1992 order to correct the erroneous recording and
7 filing citations for the 1970 order set out in the 1992
8 order.

9 Petitioners contend the 1993 order "strips 240 acres
10 out of an existing 292-acre public park and makes them into
11 a County Forest." Response to Motion to Dismiss 2.
12 Petitioners argue the citation errors in the 1992 order
13 prevented it from being effective to accomplish the
14 redesignation of the 240 acres as a county forest, and that
15 the 1993 order "was required to accomplish what the County
16 tried to accomplish in [the 1992 order]." Id. at 1.
17 Petitioners contend redesignation of the 240 acres as county
18 forest conflicts with certain provisions of the plan and
19 CCZO. Petitioners also argue that changing 240 acres of a
20 public park into a county forest will have a significant
21 impact on a current land use and, therefore, constitutes a
22 land use decision under the "significant impact test" of
23 Billington v. Polk County, 299 Or 471, 478-79, 703 P2d 232
24 (1985).

25 A local government decision is a land use decision
26 subject to LUBA's jurisdiction if it meets either (1) the

1 statutory definition in ORS 197.015(10); or (2) the
2 significant impact test established by City of Pendleton v.
3 Kerns, 294 Or 126, 133-34, 653 P2d 996 (1982). Billington
4 v. Polk County, supra; City of Portland v. Multnomah County,
5 19 Or LUBA 468, 471 (1990). In this case, the key to
6 determining whether the 1993 order satisfies either of these
7 tests is deciding whether the 1993 order redesignates 240
8 acres of a public park as a county forest, as petitioners
9 contend, or merely corrects an error in a citation contained
10 in the prior order redesignating the 240 acres, as the
11 county contends.

12 Petitioners offer no legal argument in support of their
13 contention that the 1992 order was ineffective to
14 redesignate the subject 240 acres as county forest under
15 ORS 275.320. ORS 275.320 simply provides that a board of
16 county commissioners may, by order, designate land acquired
17 by the county as county forests, public parks or
18 recreational areas. ORS 275.320 does not require that such
19 orders be recorded or filed in any particular fashion, and
20 does not impose additional requirements to amend a
21 previously adopted order making a designation under
22 ORS 275.320. As far as we can see, there is no legal
23 requirement that, in order to redesignate the subject
24 property as county forest under ORS 275.320, the board of
25 commissioners must correctly cite the place in the county
26 deed records and journal where the original 1970 order was

1 recorded or filed. Therefore, we conclude the 1992 order
2 effectively redesignated the subject 240 acres as county
3 forest pursuant to ORS 275.320.

4 In an appeal of the 1993 order, petitioners may not
5 collaterally attack a redesignation decision made in the
6 1992 order. See Perry v. Yamhill County, 26 Or LUBA 73, 77,
7 aff'd 125 Or App 588 (1993); Corbett/Terwilliger Neigh.
8 Assoc. v. City of Portland, 16 Or LUBA 49, 52 (1989). We
9 previously determined that where a local government simply
10 restates an earlier, unappealed decision, it does not
11 thereby make a new decision that is subject to review by
12 LUBA. Smith v. Douglas County, 17 Or LUBA 809, 817, aff'd
13 98 Or App 379, rev den 308 Or 608 (1989). Here, the 1993
14 order itself simply restates the 1992 order and corrects the
15 citation to the location of the original 1970 order in the
16 county deed records and county journal. The only decision
17 made by the 1993 order is correcting the citation to where
18 the original 1970 order is recorded and filed. This
19 correction does not itself concern the adoption, amendment
20 or application of the goals, CCCP or CCZO, or have a
21 significant impact on land use. Consequently, the 1993
22 order is not a land use decision subject to LUBA review, and
23 we grant the county's motion to dismiss.²

²The county has filed a motion for evidentiary hearing, seeking to introduce documents to establish (1) the subject property was redesignated as county forest by the 1992 order, rather than the 1993 order; (2) petitioners were aware of the 1992 order more than 21 days before their

1 This appeal is dismissed.

notice of intent to appeal was filed; and (3) petitioners lack standing to appeal either the 1992 order or 1993 order, because they failed to appear before the county. However, we determine in the text supra, based on the existing record in this appeal, that the decision challenged is the 1993 order; and that the 1993 order is not a land use decision subject to LUBA review. Consequently, there is no basis for an evidentiary hearing under ORS 197.830(13)(b), and the county's motion for evidentiary hearing is denied.