

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. A petitioner at LUBA must do more than simply assert that the challenged decision is a land use decision that is subject to LUBA review. *Early v. Jackson County*, 70 Or LUBA 273 (2014).

26.1 LUBA Jurisdiction – Generally. ORS 197.015(10)(b)(A) exempts from the ORS 197.015(10)(a) definition of “land use decision,” and from LUBA review, decisions that require no “exercise of policy or legal judgment.” Where a county moves to dismiss an appeal, asserting that the ORS 197.015(10)(b)(A) exemption applies, and petitioners offer no understandable response to that jurisdictional argument, petitioners fail to carry their burden to establish that LUBA has jurisdiction. *Early v. Jackson County*, 70 Or LUBA 273 (2014).

26.1 LUBA Jurisdiction – Generally. Under OAR 661-010-0075(11)(b), petitioners have 14 days from the date a party files a motion challenging LUBA’s jurisdiction over an appealed decision to file a conditional motion to transfer the appeal to circuit court, in the event LUBA sustains the jurisdictional challenge. Where petitioners do not file a conditional motion to transfer, and LUBA concludes it lacks jurisdiction, it will dismiss the appeal. *Early v. Jackson County*, 70 Or LUBA 273 (2014).

26.1 LUBA Jurisdiction – Generally. Under ORS 34.102(4), LUBA only has the authority to transfer to Circuit Court an appeal of a decision that LUBA concludes is not a land use decision or limited land use decision subject to LUBA’s jurisdiction. LUBA lacks authority to transfer to circuit court discrete “issues” raised in an appeal of a land use decision or limited land use decision, while retaining jurisdiction and review authority over the remainder of the decision. *Macfarlane v. Clackamas County*, 70 Or LUBA 497 (2014).

26.1 LUBA Jurisdiction – Generally. Where the decision that is the subject of a LUBA appeal does not exist, LUBA lacks jurisdiction and the appeal will be dismissed. *Brodersen v. City of Ashland*, 68 Or LUBA 159 (2013).

26.1 LUBA Jurisdiction – Generally. Where all parties agree that an appeal should be dismissed, but argue the appeal should be dismissed for different reasons, LUBA need only find that one reason to dismiss is well-founded. *Brodersen v. City of Ashland*, 68 Or LUBA 159 (2013).

26.1 LUBA Jurisdiction – Generally. LUBA has a statutory obligation to ensure that its jurisdiction is appropriately exercised. LUBA must address a jurisdictional challenge presented by a party even if the challenge violates a stipulated case management order signed by the party. *Terra Hydr Inc. v. Metro*, 68 Or LUBA 302 (2013).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. Even if all of the assignments of error challenging a decision on remand are barred from relitigation or waived under *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), and thus not within LUBA’s scope of review, that only means LUBA will affirm the decision, not that the decision on remand is not within LUBA’s jurisdiction. *Hatley v. Umatilla County*, 66 Or LUBA 427 (2012).

26.1 LUBA Jurisdiction – Generally. An order that simply adopts additional findings following a LUBA remand, but does not “change” any acknowledged comprehensive plan or land use regulation, is not a post-acknowledgment plan amendment, and the deadline to appeal the order to LUBA is therefore 21 days from the date the decision became final, pursuant to the first sentence of ORS 197.830(9), not 21 days from the date that notice of the order was mailed. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

26.1 LUBA Jurisdiction – Generally. The 21-day period to appeal to LUBA under the second sentence of ORS 197.830(9) commences on the date notice of the decision is

mailed to “parties entitled to notice under ORS 197.615.” The “notice” referred to in ORS 197.830(9) is the written notice that ORS 197.615(4) requires the local government to mail to participants, not the copy of the final decision that ORS 197.615(1) requires the local government to submit to DLCD. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

26.1 LUBA Jurisdiction – Generally. Where a petitioner participated in the proceedings leading to adoption of a post-acknowledgment plan amendment, and received timely notice of the decision, the deadline to appeal the decision to LUBA is 21 days from the date the notice was mailed to petitioner, not 21 days from the date the local government submits a copy of the decision to DLCD. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

26.1 LUBA Jurisdiction – Generally. Under *ODOT v. City of Oregon City*, 153 Or App 705, 959 P2d 615 (1998), the deadline to appeal a post-acknowledgment plan amendment to LUBA under the second sentence of ORS 197.830(9) is 21 days from the date the local government mails notice of the decision to parties entitled to notice, even for persons who did not participate in the proceedings and thereby become entitled to notice. However, *ODOT* does not suggest that notice failures to some parties tolls the 21-day deadline for a petitioner who did receive notice but failed to appeal the decision to LUBA within the 21-day period. *Hatley v. Umatilla County*, 66 Or LUBA 433 (2012).

26.1 LUBA Jurisdiction – Generally. LUBA may consider whether it has jurisdiction over an appeal on its own motion, and if it is uncertain whether it has jurisdiction, LUBA is obligated to do so without regard to whether the parties raise any jurisdictional question. *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. Where LUBA raises a jurisdictional issue on its own motion at oral argument, requests additional briefing from the parties on whether LUBA has jurisdiction over the appeal and, after considering the parties’ briefing, ultimately concludes that LUBA lacks jurisdiction, LUBA will dismiss the appeal unless the petitioner has filed a motion to transfer the appeal to circuit court. *Maguire v. Clackamas County*, 64 Or LUBA 288 (2011).

26.1 LUBA Jurisdiction – Generally. Under ORS 197.825(1), LUBA’s jurisdiction is limited to review of land use decisions and limited land use decisions. Adjudication of allegations of false swearing under ORS 162.075(1) is not within LUBA’s scope of review. *Rosenzweig v. City of McMinnville*, 64 Or LUBA 402 (2011).

26.1 LUBA Jurisdiction – Generally. LUBA lacks statutory authority to grant a motion to transfer an appeal to circuit court that is filed after LUBA has issued its final opinion and order dismissing the appeal. *Devereux v. Douglas County*, 64 Or LUBA 466 (2011).

26.1 LUBA Jurisdiction – Generally. Even assuming that OAR 661-010-0075(11), which provides that LUBA shall dismiss an appeal of a decision that is not reviewable as a land use decision, unless a motion to transfer to circuit court is filed within 14 days of the date any party or LUBA raises the jurisdictional issue, is inconsistent with ORS 34.102(4) or the federal due process clause, LUBA lacks authority to reconsider its final opinion to change the disposition of the appeal, in response to a motion to transfer filed after LUBA issued its final opinion dismissing the appeal. Any error that LUBA may commit in issuing the final opinion can only be corrected by appeal to the Court of Appeals. *Maguire v. Clackamas County*, 64 Or LUBA 478 (2011).

26.1 LUBA Jurisdiction – Generally. LUBA lacks the equitable power of a court to apply the doctrine of laches to dismiss an appeal based on allegations that a petitioner knew from conversations with a neighbor about the challenged decision long before filing the LUBA appeal. The legislature has comprehensively prescribed in ORS 197.830(3) and other relevant statutes the deadlines to appeal land use decisions to LUBA, including what states of knowledge are relevant in applying those deadlines. *Jones v. Douglas County*, 63 Or LUBA 261 (2011).

26.1 LUBA Jurisdiction – Generally. A decision that amends a land use decision is itself a land use decision. *Mingo v. Morrow County*, 63 Or LUBA 357 (2011).

26.1 LUBA Jurisdiction – Generally. Where there is a reasonable dispute regarding which of two documents or decisions is appealable to LUBA, the notice of intent to

appeal identifies both documents, but mistakenly identifies the wrong document as the appealable decision, LUBA will regard that mistake as a technical pleading error, treat the appealable decision as the subject of the notice, and not dismiss an otherwise properly filed appeal. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 538 (2011).

26.1 LUBA Jurisdiction – Generally. Where the notice of intent to appeal mistakenly identifies a planning commission decision as the county’s final decision, but it is clear that the petitioner wished to appeal the county’s final decision, the governing body’s decision on petitioner’s local appeal of the planning commission decision, dismissing the appeal based on that mistake would amount to dismissing the appeal based on a technical pleading error. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 538 (2011).

26.1 LUBA Jurisdiction – Generally. LUBA will not dismiss an appeal based on mistaken identification of the county’s final decision, where the appeal has proceeded from its beginning and the record was settled under a shared understanding regarding the subject of the appeal, and no party identifies prejudice to any party’s substantial rights from the petitioner’s error in mis-identifying the appealed decision in the notice of intent to appeal. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 538 (2011).

26.1 LUBA Jurisdiction – Generally. LUBA normally resolves jurisdictional challenges before considering any other arguments on the merits. However, LUBA will consider those other arguments on the merits where petitioner’s “jurisdictional” challenge is really an argument for a limited scope of review of a decision that petitioner concedes is a land use decision, and LUBA’s resolution of the arguments on the merits makes it unnecessary to resolve petitioner’s scope of review arguments. *Parker Johnstone Wilsonville Honda v. ODOT*, 62 Or LUBA 116 (2010).

26.1 LUBA Jurisdiction – Generally. Decisions that local governments do not believe to be land use decisions and do not process as land use decisions may in fact be land use decisions. *Jacobsen v. City of Winston*, 62 Or LUBA 535 (2010).

26.1 LUBA Jurisdiction – Generally. LUBA may raise the issue of jurisdiction on its own motion and at any time. *Stewart v. City of Salem*, 61 Or LUBA 77 (2010).

26.1 LUBA Jurisdiction – Generally. No statute authorizes LUBA to reconsider a previously issued final opinion. *Boucot v. City of Corvallis*, 61 Or LUBA 459 (2010).

26.1 LUBA Jurisdiction – Generally. Arguments that a permit applicant failed to raise any issue concerning a refund of permit fees in his appeal of the permit denial provide no basis for a motion to dismiss. Waiver of issues for failure to raise those issues in a local proceeding or prior LUBA appeals may affect LUBA’s scope of review, but such waiver does not affect LUBA’s jurisdiction to review a decision that qualifies as a land use decision. *Sperber v. Coos County*, 61 Or LUBA 477 (2010).

26.1 LUBA Jurisdiction – Generally. A motion to dismiss an appeal because the notice of intent to appeal inadequately described the appealed decision will be denied, where

that motion is based on a hyper-technical reading of the notice of intent to appeal and the notice of intent to appeal adequately described the comprehensive plan and zoning map amendment that the petitioner wished to appeal, even though the notice of intent to appeal did not refer to the enacting ordinance by number and erroneously referred to a resolution that adopted supporting findings but did not adopt the appealed amendment. *Just v. Linn County*, 60 Or LUBA 74 (2009).

26.1 LUBA Jurisdiction – Generally. Where a petitioner transmits the petition for review to LUBA in any way other than by first class mail with the United States Postal Service, the petition for review is not “filed” until it is received by LUBA. In that circumstance it is legally irrelevant whether the petitioner acted in good faith in using a carrier other than the United States Postal Service and it is legally irrelevant that the choice to transmit the petition for review by a means other than first class mail resulted in no delay in LUBA receiving the petition for review. *Canfield v. Lane County*, 59 Or LUBA 505 (2009).

26.1 LUBA Jurisdiction – Generally. Whether the OAR 661-010-0030(1) requirement that a LUBA appeal be dismissed if the petition for review is not filed within the 21-day deadline established by that rule is a *jurisdictional* requirement or merely a *compulsory non-jurisdictional* basis for dismissing the appeal, the ten-day rule in OAR 661-010-0065(2) that requires a motion to be filed within 10-days after discovery of a failure to comply with LUBA’s rules does not apply to a motion to dismiss based on a petitioner’s failure to comply with the deadline established by OAR 661-010-0030(1) for filing the petition for review. *Canfield v. Lane County*, 59 Or LUBA 505 (2009).

26.1 LUBA Jurisdiction – Generally. When a local government dismisses a local appeal of a decision that is a land use decision, LUBA has jurisdiction to review that dismissal even if the dismissal did not require interpretation or the exercise of policy or legal judgment. *Golden v. City of Silverton*, 58 Or LUBA 399 (2009).

26.1 LUBA Jurisdiction – Generally. Under Measure 37, specifically under ORS 197.352(9) (2005), public entity decisions to modify or to waive land use laws in response to Measure 37 claims were not land use decisions and were therefore not reviewable by LUBA. Public entity decisions that were issued following those modification or waiver decisions, which applied modified land use laws or land use laws that were not waived under Measure 37 were land use decisions and were reviewable by LUBA. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

26.1 LUBA Jurisdiction – Generally. Decisions under Measure 49 are not land use decisions and are not subject to LUBA’s jurisdiction. ORS 195.305(7); 195.318(1). *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

26.1 LUBA Jurisdiction – Generally. Under ORS 195.305(7) local government decisions about the “nature and extent” of just compensation due under Ballot Measure 49 are not land use decisions. However, a local government decision maker’s *understanding* that approval of a preliminary plat was a decision about the “nature and

extent” of just compensation under Measure 49 has no bearing on whether the decision actually is a decision about the “nature and extent” of just compensation under Measure 49. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

26.1 LUBA Jurisdiction – Generally. A preliminary subdivision plat approval decision that post-dates a vested rights determination under Measure 49 is a land use decision subject to LUBA’s review and is not a decision concerning the “nature and extent of [just] compensation” under Measure 49. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. In an appeal of a subdivision decision that relies on Ballot Measure 37 waivers and a Ballot Measure 49 vested rights decision, LUBA’s scope of review includes resolving questions about the scope of the previously issued Ballot Measure 37 waiver. A decision about the scope of a previously issued Ballot Measure 37 waiver is not a decision about the “nature and extent of [just] compensation” under Measure 49 (ORS 195.305(7)) and is therefore subject to LUBA review. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

26.1 LUBA Jurisdiction – Generally. LUBA may consider documents that are not in the record, even without a motion to take evidence under OAR 661-010-0045, if a party offers such documents for the limited purpose of determining whether LUBA has jurisdiction over the challenged decision. *Murray v. Multnomah County*, 56 Or LUBA 370 (2008).

26.1 LUBA Jurisdiction – Generally. Designation of tax lots is not a land use decision. *Chaves v. Jackson County*, 56 Or LUBA 643 (2008).

26.1 LUBA Jurisdiction – Generally. LUBA does not have authority to “reopen” or “restart” an appeal in which LUBA has already issued a final opinion and order. The only recourse for a party that wishes to challenge our final opinion and order is to appeal our decision to the Court of Appeals. *Jacobsen v. Douglas County*, 56 Or LUBA 816 (2008).

26.1 LUBA Jurisdiction – Generally. The filing of a Notice of Intent to Appeal (NITA) is a jurisdictional prerequisite to commencing a LUBA appeal. Where all petitioners withdraw the NITA, the appeal must be dismissed. *Brown v. Jackson County*, 55 Or LUBA 178 (2007).

26.1 LUBA Jurisdiction - Generally. Petitioners’ failure to include an adequate jurisdictional statement in their petition for review is not a basis for dismissing their appeal, where their dispute about whether the challenged decision is a land use decision is the central dispute and petitioners’ first assignment of error alleges that the appealed decision is a land use decision that is subject to LUBA review. *Zirker v. City of Bend*, 55 Or LUBA 188 (2007).

26.1 LUBA Jurisdiction - Generally. Petitioners’ argument that a prior zoning ordinance did not allow a mushroom buying business is moot, where the currently applicable zoning ordinance that replaced the prior zoning ordinance does not allow a mushroom buying business and would apply to any application for a mushroom buying business in the future. *Robson v. City of La Grande*, 54 Or LUBA 10 (2007).

26.1 LUBA Jurisdiction – Generally. Whether the Oregon Department of Environmental Quality properly issued a permit in reliance on a local government land use compatibility statement has no bearing on whether that land use compatibility statement is a land use decision as defined in ORS 197.015(11). *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. LUBA’s scope of review is not limited to the local government record under ORS 197.835(2)(a) when LUBA is considering whether the decision on appeal is a land use decision that is subject to LUBA review. Making that threshold jurisdictional inquiry does not entail “[r]eview of the decision,” within the meaning of ORS 197.835(2)(a). *Home Builders Association v. City of Eugene*, 54 Or LUBA 692 (2007).

26.1 LUBA Jurisdiction – Generally. Where the legal effect of withdrawal of an application on a land use decision that approved that application is not clear under a county’s land use regulation, LUBA will deny a motion to dismiss based on the withdrawal. *Jacobsen v. Douglas County*, 54 Or LUBA 790 (2007).

26.1 LUBA Jurisdiction – Generally. An agreement between a local government and a private party for development of a sports park is not a “development agreement” as defined in ORS 94.504, where it is clear from the language of the agreement that the

parties did not intend the agreement to comply with the requirements of ORS 94.504(1) – (8). *Dorall v. Coos County*, 53 Or LUBA 32 (2006).

26.1 LUBA Jurisdiction – Generally. Referral to the Court of Appeals under ORS 34.102(5) is not appropriate or required where LUBA will have jurisdiction to review the county’s interlocutory decision denying a motion to dismiss as part of its review of the county’s final decision on the application. *Ratzlaff v. Polk County*, 53 Or LUBA 480 (2007).

26.1 LUBA Jurisdiction – Generally. LUBA need not resolve the parties’ legal dispute over whether a condition of subdivision approval requiring construction of a street through a neighboring development is consistent with conditions, covenants and restrictions governing that neighboring development, where only the circuit court has jurisdiction to finally resolve that dispute, and the local government has adequately established an alternative basis to impose the condition regardless of how that legal dispute is resolved. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

26.1 LUBA Jurisdiction – Generally. Based on *dicta* in *Kalmiopsis Audubon Society v. Curry County*, 131 Or App 308, 884 P2d 894 (1994), it is theoretically possible to appeal a decision that purports to correct a “clerical error” in a final, unappealed decision, as long as the petitioner demonstrates that the correction qualifies as a land use decision and the appeal is narrowly focused on the correction itself, rather than the unappealed decision. *Hoschek v. Tillamook County*, 52 Or LUBA 793 (2006).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. A decision approving a manufactured home subdivision is a limited land use decision subject to LUBA’s jurisdiction. That the decision includes a condition of approval that imposes or references system development charges does not mean that the decision is excluded from LUBA’s jurisdiction as a “fiscal” decision under the reasoning in *State Housing Council v. City of Lake Oswego*, 48 Or App 525, 617 P2d 655 (1980). *D & B Home Investments v. City of Donald*, 51 Or LUBA 1 (2006).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. Where the local government failed to provide either (1) a “notice of a hearing” required by ORS 197.763 or (2) notice of an “administrative decision” required by ORS 197.195, ORS 197.830(6)(b) provides that the statute of ultimate repose in ORS 197.830(6)(a) does not apply. Failure to provide notice required by other statutes or by local codes do not provide an exception to the three-year statute of ultimate repose. *Kamp v. Washington County*, 51 Or LUBA 670 (2006).

26.1 LUBA Jurisdiction – Generally. Notice of withdrawal of a permit application required by local ordinance is not “notice of a hearing” required by ORS 197.763, and failure to provide such notice of withdrawal does not invoke the exception to the statute of ultimate repose at ORS 197.803(6)(b). *Kamp v. Washington County*, 51 Or LUBA 670 (2006).

26.1 LUBA Jurisdiction – Generally. Failure to provide notice of withdrawal of a permit application required by local ordinance is not a failure to provide the “notice of decision” required by the statutes governing limited land use decisions at ORS 197.195, for purposes of the statute of ultimate repose at ORS 197.830(6), where it is undisputed that the subject property is not within an urban growth boundary and for that reason alone a decision with respect to the application cannot be a limited land use decision. *Kamp v. Washington County*, 51 Or LUBA 670 (2006).

26.1 LUBA Jurisdiction – Generally. The requirements in OAR 661-010-0015(3) that the notice of intent to appeal include a caption identifying the “governing body” as the respondent and that the notice include the name and telephone number of the governing body and its counsel serve important purposes, including notifying the local government responsible for compiling the record and defending the decision before LUBA that its decision has been appealed, but those requirements are not in themselves jurisdictional. *Stoloff v. City of Portland*, 51 Or LUBA 812 (2006).

26.1 LUBA Jurisdiction – Generally. Where pursuant to an intergovernmental agreement a city acts as the final decision maker for a county, compiles the record, and defends the decision before LUBA, the purposes of OAR 661-010-0015(3) are better served by naming the city rather than the county as the respondent. *Stoloff v. City of Portland*, 51 Or LUBA 812 (2006).

26.1 LUBA Jurisdiction – Generally. Failure to satisfy the content requirements for a notice of an intent to appeal is a technical violation of LUBA’s rules that does not provide a basis to dismiss the appeal, absent a showing of prejudice to the parties’ substantial rights. Where no prejudice is shown, LUBA will allow the notice to be amended to name the correct parties. *Stoloff v. City of Portland*, 51 Or LUBA 812 (2006).

26.1 LUBA Jurisdiction – Generally. LUBA will deny a motion to dismiss, which is based on an argument that there is no “reasonable basis” to appeal the challenged subdivision approval, where no pleadings have yet been filed and the movant fails to demonstrate that the decision is subject to any exception to LUBA’s jurisdiction. Even if petitioner is ultimately unable to advance a meritorious challenge to the decision, LUBA would affirm the decision rather than dismiss the appeal. *Frewing v. City of Tigard*, 51 Or LUBA 834 (2006).

26.1 LUBA Jurisdiction – Generally. Statutes relating to development agreements, ORS 94.5084 et seq., are not the exclusive avenue for a local government to adopt development agreements, and the language in ORS 94.508(2) providing that approval or amendment of a development agreement is a land use decision does not apply to a city’s adoption of a development agreement pursuant to its charter authority. *ZRZ Realty Company v. City of Portland*, 49 Or LUBA 309 (2005).

26.1 LUBA Jurisdiction – Generally. An allegation that a local ordinance authorizes actions prohibited under contract with federal government does not fall within LUBA’s scope of review. *Roads End Sanitary District v. City of Lincoln City*, 48 Or LUBA 126 (2004).

26.1 LUBA Jurisdiction – Generally. Contrary to *Thede v. Polk County*, 1 Or LUBA 339 (1980), irregularities in signing and approving a final city decision does not mean that the challenged decision is not a “final decision” subject to LUBA’s jurisdiction. *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 618 (2004).

26.1 LUBA Jurisdiction – Generally. An argument that the assignments of error in the petition for review are directed at decisions not before LUBA is not a basis to dismiss an appeal of a decision otherwise within LUBA’s jurisdiction. If that argument is correct, the proper disposition is to reject the assignments of error in the petition for review and affirm the challenged decision, not to dismiss the appeal. Such arguments are more correctly viewed as a scope of review challenge rather than a jurisdictional challenge. *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282 (2004).

26.1 LUBA Jurisdiction – Generally. A challenge to LUBA’s jurisdiction may be brought at any time, and a city’s delay of several months in filing its motion to dismiss provides no basis for LUBA to refuse to consider the city’s motion to dismiss. *Dobson v. City of Newport*, 47 Or LUBA 589 (2004).

26.1 LUBA Jurisdiction – Generally. Where a petitioner does not ask any questions of LUBA staff or city staff until the last day to file her notice of intent to appeal under her legal theory and nine days after the notice of intent to appeal was due under the city’s legal theory, nothing city or LUBA staff may have said to petitioner could be the cause of her failing to file a timely notice of intent to appeal under the city’s legal theory. *Dobson v. City of Newport*, 47 Or LUBA 589 (2004).

26.1 LUBA Jurisdiction – Generally. Although a motion to dismiss may be filed at any time prior to the issuance of a final opinion and order, a party is not entitled to file unlimited motions on the same issue. When a party has had ample time to brief and argue jurisdictional issues, LUBA is not obligated to reconsider earlier orders regarding jurisdiction. *Comrie v. City of Pendleton*, 46 Or LUBA 19 (2003).

26.1 LUBA Jurisdiction – Generally. LUBA does not have the authority to issue a remedial order that requires an applicant to restore property to the condition it was in prior to approval of the challenged application in the event petitioners prevail in their LUBA appeal. *Roberts v. Clatsop County*, 44 Or LUBA 178 (2003).

26.1 LUBA Jurisdiction – Generally. Where the respondent argues that its decision is merely a recommendation to another governing body, and thus not a final decision, and the petitioner fails to respond to that argument, the petitioner has not met his burden of establishing the Board’s jurisdiction, and the appeal will be dismissed. *Ziemer v. City of Florence*, 43 OR LUBA 1 (2002).

26.1 LUBA Jurisdiction – Generally. Where the petitioners do not argue that a city decision establishing a local improvement district to fund street improvements is a land use decision, LUBA does not have jurisdiction to review the city’s decision. *Hazelnut A Partners v. City of Woodburn*, 42 Or LUBA 474.

26.1 LUBA Jurisdiction – Generally. Ancillary local government decisions pertaining to the siting of energy generating facilities that might otherwise fall under the definition of land use decisions subject to LUBA’s jurisdiction are nevertheless subject to the exclusive jurisdiction of the Oregon Energy Facility Siting Council, with direct review by the Oregon Supreme Court. *Thomas v. City of Turner*, 42 Or LUBA 39.

26.1 LUBA Jurisdiction – Generally. ORS 197.805 can be read in isolation to suggest that LUBA must apply the “practical effect” limitation on the judicial power described in *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001), as a “sound principle of judicial review.” However, read in context with ORS 197.830, it is clear that the legislature did not intend to require that petitioners invoking LUBA’s review under ORS 197.830(2) establish that the challenged decision impacts their interests. *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 524 (2002).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. ORS 197.090(2) requires DLCD to obtain approval from LCDC prior to filing an appeal with LUBA, but allows DLCD to obtain approval after the fact if the decision being appealed becomes final less than 15 days

before the next LCDC meeting or no meeting is scheduled during the appeal period. However, nothing in the statute indicates that the timing of approval has jurisdictional significance, or that LUBA loses jurisdiction over the appeal if DLCD erroneously obtains after-the-fact approval rather than prior approval. *DLCD v. Douglas County*, 40 Or LUBA 604 (2001).

26.1 LUBA Jurisdiction – Generally. ORS 197.626 provides the Land Conservation and Development Commission with exclusive jurisdiction to review decisions that amend an urban growth boundary (UGB) to include more than 50 acres. However, ORS 197.626 does not deprive LUBA of jurisdiction over a final decision that amends the city’s comprehensive plan housing needs inventory but does not amend the UGB or otherwise determine how the city will accommodate the identified housing needs. *DLCD v. City of McMinnville*, 40 Or LUBA 591 (2001).

26.1 LUBA Jurisdiction – Generally. Under ORS 197.644(2) and OAR 660-025-0040, it is possible for the Land Conservation and Development Commission and LUBA to have concurrent jurisdiction over the same land use decision, albeit each may have exclusive jurisdiction over different issues arising from the decision. *DLCD v. City of McMinnville*, 40 Or LUBA 591 (2001).

26.1 LUBA Jurisdiction – Generally. LUBA has jurisdiction under ORS 197.644(2), ORS 197.825(2)(c) and OAR 660-025-0040(1) over a decision amending a city’s comprehensive plan housing inventory, notwithstanding that the city is undergoing periodic review, where the decision was not adopted to implement the city’s periodic review work program or any work program tasks. *DLCD v. City of McMinnville*, 40 Or LUBA 591 (2001).

26.1 LUBA Jurisdiction – Generally. Where a city has not responded to petitioner’s concerns that a property owner lost his right to continue a nonconforming residential use, petitioner may be able to seek a remedy in circuit court under ORS 197.825(3)(a). However, unless and until the city addresses those concerns in a land use decision, LUBA has no jurisdiction to consider those concerns. *Robson v. City of La Grande*, 40 Or LUBA 250 (2001).

26.1 LUBA Jurisdiction – Generally. Where LUBA has determined in a prior earlier appeal that a conditional use permit has expired, a subsequent appeal challenging a city decision that refuses to revoke the conditional use permit or delete certain conditions of approval in the conditional use permit is moot. *Willhoft v. City of Gold Beach*, 39 Or LUBA 353 (2001).

26.1 LUBA Jurisdiction – Generally. Where a petitioner fails to respond to an apparently meritorious motion to dismiss, petitioner fails to carry his burden to demonstrate that the challenged decision is a land use decision subject to review by LUBA. *Rohrer v. Crook County*, 38 Or LUBA 8 (2000).

26.1 LUBA Jurisdiction – Generally. Where a county enforcement decision does not apply or interpret any land use regulations in deciding that a mobile home set-up permit

is the equivalent of a building permit for the purpose of determining whether a permit deadline has been met, the county's decision is not a land use decision subject to LUBA's jurisdiction. *Balk v. Multnomah County*, 38 Or LUBA 1 (2000).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. LUBA's dismissal of an appeal at petitioner's request expresses no opinion on the merits of any underlying agreement or any actions taken by the local government that may form the basis for petitioner's decision to request that its appeal be dismissed. *Genstar Land Company Northwest v. City of Sherwood*, 36 Or LUBA 612 (1999).

26.1 LUBA Jurisdiction – Generally. Where the relationship between two decisions is not clear from the parties' memoranda, LUBA will deny a motion to dismiss and defer a ruling on jurisdiction until after the parties' briefs are filed and an opportunity for oral

argument is provided. *Columbia Hills Development Co. v. Columbia County*, 35 Or LUBA 737 (1998).

26.1 LUBA Jurisdiction – Generally. An access permit for petitioner’s subdivision and an irrevocable consent agreement are neither land use or limited land use decisions, as defined by ORS 197.015(10) and (12), over which LUBA has jurisdiction. *River Estates v. Umatilla County*, 35 Or LUBA 310 (1998).

26.1 LUBA Jurisdiction – Generally. Whether multiple enactments constitute a single decision for purposes of appeal to LUBA depends on the relationship between the enactments. Where a decision on reconsideration reenacts the original decision together with a supplemental enactment that is characterized as an "integral part" of the reconsidered decision, there is a single decision for purposes of appeal of the decision on reconsideration to LUBA. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

26.1 LUBA Jurisdiction – Generally. Where a different, closely related decision is not separately appealed to LUBA, LUBA has no jurisdiction to conduct a consolidated review of the decision that was not appealed as part of its review of the decision that was appealed. *Jebousek v. City of Newport*, 34 Or LUBA 340 (1998).

26.1 LUBA Jurisdiction – Generally. LUBA’s jurisdiction is limited to reviewing the land use decision appealed. In reviewing an appealed land use decision, LUBA may not consider whether a code amendment that is applied in the challenged decision was properly adopted, where the decision adopting the code amendment was not appealed. *Femling v. Coos County*, 34 Or LUBA 328 (1998).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. The parties to an appeal at LUBA may not by agreement stipulate that LUBA has jurisdiction to review a separate decision that was not appealed to LUBA. *Mountain Gate Homeowners v. Washington County*, 34 Or LUBA 169 (1998).

26.1 LUBA Jurisdiction – Generally. A challenge to LUBA's jurisdiction is not subject to the 10-day requirement of OAR 661-10-065(2), which governs motions that challenge an opposing party's failure to comply with statutes or LUBA's rules. *Adams v. City of Ashland*, 33 Or LUBA 552 (1997).

26.1 LUBA Jurisdiction – Generally. LUBA is obligated as an appellate body to examine its jurisdiction *sua sponte*, regardless of whether the issue is raised by the parties. *Adams v. City of Ashland*, 33 Or LUBA 552 (1997).

26.1 LUBA Jurisdiction – Generally. A county's delay in providing petitioner with notice of decision does not toll the 21-day appeal period set forth in ORS 197.830(8), and under *Wicks-Snodgrass v. City of Reedsport*, 148 Or App 217, 939 P2d 625 (1997), LUBA has no jurisdiction over an appeal filed more than 21 days after the county's decision became final. *Michael-Mark v. Yamhill County*, 33 Or LUBA 409 (1997).

26.1 LUBA Jurisdiction – Generally. LUBA will consider appended materials outside the record to the extent they aid in determining whether a local government's action is a land use decision subject to LUBA jurisdiction. *Ceniga v. Clackamas County*, 33 Or LUBA 261 (1997).

26.1 LUBA Jurisdiction – Generally. A challenge to LUBA's jurisdiction is not subject to the 10-day requirement of OAR 661-10-065(2); it may be brought at any time prior to LUBA's issuance of a final opinion and order. *Petersen v. Columbia County*, 33 Or LUBA 253 (1997).

26.1 LUBA Jurisdiction – Generally. With the exception of ORS 197.540, which authorizes LUBA to review a moratorium on land construction or development alleged to have been adopted in violation of the moratorium statute (ORS 197.505 to 197.540), LUBA's jurisdiction is limited by ORS 197.825(1) to the review of any land use decision or limited land use decision of a local government. *Cole v. Lane Transit District*, 33 Or LUBA 201 (1997).

26.1 LUBA Jurisdiction – Generally. Service of copies of the notice of intent to appeal is a jurisdictional requirement under OAR 661-10-015(2); while late service of such notice is a technical violation that will not result in dismissal, a complete failure to provide such notice defeats LUBA's jurisdiction. *Bruce v. City of Hillsboro*, 32 Or LUBA 382 (1997).

26.1 LUBA Jurisdiction – Generally. Where petitioner's objective is to require the city to apply its comprehensive plan or land use regulations, petitioner's remedy lies in circuit court, not at LUBA. *No Casino Association v. City of Lincoln City*, 32 Or LUBA 154 (1996).

26.1 LUBA Jurisdiction – Generally. The jurisdictional statement required by OAR 660-10-030(2) provides a means for LUBA to determine whether the challenged decision fits within the statutory scope of its jurisdiction. The statement does not limit the issues that may be raised in the body of a petition for review. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

26.1 LUBA Jurisdiction – Generally. ORS 258.036, which governs jurisdiction over election contests, does not apply to the election of members to a county citizen planning advisory committee (CPAC). *Boom v. Columbia County*, 31 Or LUBA 318 (1996).

26.1 LUBA Jurisdiction – Generally. LUBA's jurisdiction is governed by the applicable statutes in effect when the notice of intent to appeal was filed. *Torgeson v. Clackamas County*, 31 Or LUBA 554 (1996).

26.1 LUBA Jurisdiction – Generally. A local government cannot confer appeal jurisdiction on LUBA where jurisdiction does not otherwise exist by including in a notice of ordinance adoption a statement that there is an appeal to LUBA. *Mazeski v. Wasco County*, 31 Or LUBA 126 (1996).

26.1 LUBA Jurisdiction – Generally. In deciding jurisdictional challenges, LUBA will consider material attached to the parties' briefs if no party objects. If a party does object, the appropriate means to introduce evidence from outside the record is through a motion for an evidentiary hearing. *Mazeski v. Wasco County*, 31 Or LUBA 126 (1996).

26.1 LUBA Jurisdiction – Generally. Where the local government in a motion to dismiss raises a significant issue regarding LUBA's jurisdiction over a purported land use decision, and petitioner does not respond to the motion or otherwise explain the basis for LUBA's jurisdiction, petitioner has not satisfied its burden of establishing jurisdiction. *Bennett v. Polk County*, 30 Or LUBA 349 (1996).

26.1 LUBA Jurisdiction – Generally. When the 1995 legislature amended ORS 197.835, it did not deprive LUBA of jurisdiction over issues that could be raised at the time the notice of intent to appeal was filed. *Ramsay v. Linn County*, 30 Or LUBA 283 (1996).

26.1 LUBA Jurisdiction – Generally. Because petitioner's notice of intent to appeal was accompanied by a check made out to the wrong agency and the error was not corrected before the expiration of the appeal period, LUBA has no jurisdiction over the appeal. *Ray v. Douglas County*, 30 Or LUBA 238 (1995).

26.1 LUBA Jurisdiction – Generally. LUBA does not retain jurisdiction over a proceeding once it has issued a final opinion and order. *Mazeski v. Wasco County*, 30 Or LUBA 442 (1995).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. A challenge to LUBA's jurisdiction is not subject to the ten-day requirement of OAR 661-10-065(2), which governs motions that challenge an opposing party's failure to comply with statutes or LUBA's rules. *No Casino Association v. Lincoln City*, 30 Or LUBA 79 (1995).

26.1 LUBA Jurisdiction – Generally. Where petitioners do not respond to a motion to dismiss for lack of jurisdiction, or otherwise establish that actions taken by the county constitute a land use decision, petitioners have not met their burden of establishing

LUBA's jurisdiction. *Murphy Cit. Advisory Committee v. Josephine County*, 30 Or LUBA 28 (1995).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. The Public Records Law provides that it is enforced by petition to the county district attorney and, if that fails, by instituting an action in circuit court. ORS 192.460. LUBA does not have jurisdiction to review alleged violations of the Public Records Law. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

26.1 LUBA Jurisdiction – Generally. Whether planning commission members comply with a local government's requirements regarding the make-up of its planning commission is not within LUBA's scope of review. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

26.1 LUBA Jurisdiction – Generally. Where the city council conducted a separate proceeding on the question of whether off-street parking use of certain property requires a conditional use permit, petitioners participated in that proceeding, and city council minutes indicate a final, appealable decision interpreting the local code in this regard was made, petitioners cannot challenge that decision in their appeal of the city's subsequent decision on an application for site plan approval for such off-street parking. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

26.1 LUBA Jurisdiction – 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).

26.1 LUBA Jurisdiction – Generally. As the party seeking review, a petitioner has the burden of establishing LUBA has jurisdiction. *1000 Friends of Oregon v. Columbia County*, 29 Or LUBA 597 (1995).

26.1 LUBA Jurisdiction – Generally. LUBA does not have the authority to reject an otherwise properly filed appeal on the basis of an equitable defense of laches. *Nehoda v. Coos County*, 29 Or LUBA 251 (1995).

26.1 LUBA Jurisdiction – Generally. The provisions of ORS 94.504 to 94.528 (1993) making the approval or amendment of a "development agreement" a "land use decision," do not apply to agreements that may be titled "Development Agreements," but were executed prior to the effective date of the 1993 statute. *Franklin v. Deschutes County*, 29 Or LUBA 79 (1995).

26.1 LUBA Jurisdiction – Generally. Where the dispute between the parties involves an ethical dispute concerning the application of disciplinary rules of the Oregon State Bar that have no direct bearing on the merits of the decision appealed to LUBA, LUBA will not attempt to resolve such ethical dispute. *Burghardt v. City of Molalla*, 28 Or LUBA 788 (1995).

26.1 LUBA Jurisdiction – Generally. Petitioners generally establish LUBA's jurisdiction in the petition for review. However, if a respondent moves to dismiss the LUBA appeal on the basis that the appealed decision is not a land use decision or that the appeal was not timely filed, petitioner's response to the motion to dismiss must establish that LUBA has jurisdiction. *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

26.1 LUBA Jurisdiction – Generally. A motion challenging LUBA's jurisdiction is not subject to the 10-day filing requirement for motions specified in OAR 661-10-065(2). *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

26.1 LUBA Jurisdiction – Generally. It is petitioner's obligation to establish LUBA's jurisdiction, including that petitioner's notice of intent to appeal was timely filed. *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

26.1 LUBA Jurisdiction – Generally. That an individual member of the board of commissioners may have told a newspaper that he believes certain uses of the subject property are incidental to farm use or otherwise are permitted uses in the EFU zoning district, does not constitute a decision of the board of commissioners. *Bach v. Deschutes County*, 28 Or LUBA 58 (1994).

26.1 LUBA Jurisdiction – Generally. Where a notice of intent to appeal filed at LUBA is later withdrawn, the LUBA appeal must be dismissed. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

26.1 LUBA Jurisdiction – Generally. LUBA's jurisdiction over an appeal is governed by the statutes in effect when the notice of intent to appeal initiating that appeal was filed. *Williams v. Clackamas County*, 27 Or LUBA 602 (1994).

26.1 LUBA Jurisdiction – Generally. A local government decision is a land use decision subject to LUBA's jurisdiction if it meets either (1) the statutory definition in ORS 197.015(10); or (2) the significant impact test established by *City of Pendleton v. Kerns*, 294 Or 126, 133-34, 653 P2d 996 (1982). *Sahagian v. Columbia County*, 27 Or LUBA 341 (1994).

26.1 LUBA Jurisdiction – Generally. 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).

26.1 LUBA Jurisdiction – Generally. LUBA lacks jurisdiction to reopen an appeal, once its final opinion and order in that appeal is issued. *Fechtig v. City of Albany*, 27 Or LUBA 648 (1994).

26.1 LUBA Jurisdiction – Generally. LUBA does not have authority to deny respondent the right to appear and defend its decision in an appeal before LUBA. *Sanchez v. Clatsop County*, 26 Or LUBA 631 (1994).

26.1 LUBA Jurisdiction – Generally. The exclusive forum for enforcement of public meetings laws is circuit court. That public meetings law violations may have occurred during the land use decision making process does not, of itself, provide a basis for reversal or remand. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

26.1 LUBA Jurisdiction – Generally. Where a local government decision determines the effect of a previous decision, LUBA may not review the legal sufficiency of the previous decision. *Rodriguez v. Marion County*, 26 Or LUBA 50 (1993).

26.1 LUBA Jurisdiction – 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).

26.1 LUBA Jurisdiction – Generally. Petitioner has the obligation to establish LUBA's jurisdiction. Where respondent moves to dismiss an appeal challenging a local government decision ordering compliance with local government land use regulations, alleging the challenged compliance order is not a land use decision, and petitioner fails to respond to the motion, LUBA will dismiss the appeal. *Kezar v. Clackamas County*, 26 Or LUBA 16 (1993).

26.1 LUBA Jurisdiction – Generally. As the party seeking LUBA review, the burden is on petitioner to establish that the challenged decision is a land use decision. Where petitioner fails to identify any comprehensive plan provision as applicable to, or argue that any plan provision is an approval standard for, the challenged decision, LUBA will conclude the challenged decision does not concern the application of a comprehensive plan. *Price v. Clatsop County*, 25 Or LUBA 341 (1993).

26.1 LUBA Jurisdiction – Generally. LUBA has no authority to reconsider or clarify its final opinions and orders. *Caine v. Tillamook County*, 25 Or LUBA 785 (1993).

26.1 LUBA Jurisdiction – Generally. Where a party simply asserts that LUBA lacks jurisdiction over an appeal, but fails to explain why, and it appears to LUBA that it has jurisdiction, LUBA will assume jurisdiction over the appeal. *A Storage Place v. City of Tualatin*, 25 Or LUBA 202 (1993).

26.1 LUBA Jurisdiction – Generally. Where the planning commission delegated to the city manager authority to grant extensions of PUD overall development plan approval, and neither the planning commission's decision nor the city manager's decision exercising that authority was appealed, LUBA will not consider arguments that the planning commission improperly delegated authority to the city manager in an appeal of a subsequent city decision granting final PUD approval. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

26.1 LUBA Jurisdiction – Generally. LUBA has authority to promulgate rules allowing the filing of cross petitions for review by respondents who have not themselves filed timely notices of intent to appeal. *Reusser v. Washington County*, 24 Or LUBA 652 (1993).

26.1 LUBA Jurisdiction – Generally. That petitioner may be precluded from raising the issues it seeks to raise in a LUBA appeal because those issues were required to have been raised and resolved in an earlier stage of the local land use proceeding, which petitioner did not appeal, would not mean that LUBA would lack jurisdiction to review the challenged decision. Rather, in such circumstances, LUBA would be required to affirm the decision. *DLCD v. Crook County*, 24 Or LUBA 393 (1993).

26.1 LUBA Jurisdiction – Generally. In determining whether it has jurisdiction over an appeal, absent some objection from the parties, LUBA will consider materials from the record of a related LUBA appeal that are attached to parties' briefs, as well as other material in the record of that related appeal. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

26.1 LUBA Jurisdiction – Generally. The timely filing of a notice of intent to appeal is required for LUBA to have jurisdiction. Where the time for filing a notice of intent to appeal runs from the date a petitioner obtained actual knowledge of the decision or knew or should have known of the decision, it is petitioner's burden to establish when the requisite knowledge of the decision was obtained. *Leonard v. Union County*, 24 Or LUBA 362 (1992).

26.1 LUBA Jurisdiction – Generally. A local government decision is a land use decision subject to LUBA's jurisdiction if it meets either (1) the statutory definition in ORS 197.015(10); or (2) the significant impact test. *Curtis Serve N Save v. City of Eugene*, 24 Or LUBA 341 (1992).

26.1 LUBA Jurisdiction – Generally. As the party seeking review by LUBA, petitioner has the burden of establishing that LUBA has jurisdiction. Where a petitioner argues her notice of intent to appeal is timely because it was filed within 21 days after she received actual notice of the challenged decision, the petitioner must support her argument with affidavits, record citations or other evidence. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

26.1 LUBA Jurisdiction – Generally. Where allegations of fact made in petitioner's briefs are critical to establishing LUBA's jurisdiction, respondents dispute those allegations, and petitioner neither provides citations to the record, affidavits or other evidence supporting the allegations nor files a motion for evidentiary hearing seeking to introduce evidence to support the allegations, LUBA will dismiss the appeal. *Sparrows v. Clackamas County*, 24 Or LUBA 318 (1992).

26.1 LUBA Jurisdiction – Generally. That the electorate may have exceeded its authority in adopting land use legislation by initiative, is a question bearing on the merits of an appeal from such a decision, not on LUBA's jurisdiction to review the appealed decision. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 607 (1992).

26.1 LUBA Jurisdiction – Generally. A special district decision is a "land use decision" subject to LUBA review if it meets either (1) the statutory definition in ORS 197.015(10), or (2) the significant impact test. *Keating v. Heceta Water District*, 24 Or LUBA 175 (1992).

26.1 LUBA Jurisdiction – Generally. Where a local planning official refuses to accept petitioner's local appeal of a hearings officer's decision on a permit application, but another local appeal of the same decision is processed, the refusal is either (1) a final land use decision, in which case a NITA must be timely filed with LUBA; or (2) part of the ongoing local proceedings on the subject application, in which case in an appeal of the local government's final decision, LUBA can only consider issues concerning the refusal to accept petitioner's appeal if those issues were raised below. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

26.1 LUBA Jurisdiction – Generally. LUBA has no authority to issue an order clarifying its final opinion. *Alliance for Resp. Land Use v. Deschutes County*, 23 Or LUBA 717 (1992).

26.1 LUBA Jurisdiction – Generally. The land use decision reviewed in an appeal before LUBA is the final written decision, not what individual parties, staff or members of the decision making body may have stated during the course of the proceedings below. *Hess v. City of Portland*, 23 Or LUBA 343 (1992).

26.1 LUBA Jurisdiction – Generally. A notice of intent to appeal identifying one land use decision may not later be amended to include a second decision, where no notice of intent to appeal the second decision was filed within the time required by statute and no filing fee or deposit for costs has been paid to challenge the second decision. *Hood River Sand v. City of Mosier*, 23 Or LUBA 701 (1992).

26.1 LUBA Jurisdiction – Generally. A local government decision is a land use decision if it meets either (1) the statutory definition in ORS 197.015(10); or (2) the significant impact test established by *City of Pendleton v. Kerns*, 294 Or 126, 133-34, 653 P2d 996 (1982). *Miller v. City of Dayton*, 22 Or LUBA 661 (1992).

26.1 LUBA Jurisdiction – Generally. As the party seeking LUBA review, the burden is on petitioner to establish that the appealed decision is a land use decision. *Miller v. City of Dayton*, 22 Or LUBA 661 (1992).

26.1 LUBA Jurisdiction – Generally. Where LUBA determines an appealed decision is not reviewable as a land use decision, and a request to transfer the appeal to circuit court pursuant to ORS 19.230 was not filed within ten days after the respondent's brief was due, as required by OAR 661-10-075(10)(b), LUBA will dismiss the appeal. *Miller v. City of Dayton*, 22 Or LUBA 661 (1992).

26.1 LUBA Jurisdiction – Generally. Under ORS 197.830(1), the maintenance of a validly filed notice of intent to appeal is required for LUBA to have jurisdiction over an appeal. *Ramsey v. City of Portland*, 22 Or LUBA 535 (1992).

26.1 LUBA Jurisdiction – Generally. A statutory change in the tribunal with appellate jurisdiction affects the legal rights and obligations of parties arising out of past transactions, and retrospective application of such a change in jurisdictional statutes to pending appeals is not appropriate. *Schultz v. City of Grants Pass*, 22 Or LUBA 457 (1991).

26.1 LUBA Jurisdiction – Generally. Where LUBA lacks jurisdiction over an appeal challenging a decision approving a land division within an urban growth boundary under the jurisdictional statutes existing on the date the notice of intent to appeal is filed, LUBA does not obtain jurisdiction to consider such an appeal when legislation giving LUBA jurisdiction over appeals of such decisions becomes effective while the improperly filed appeal is pending. *Schultz v. City of Grants Pass*, 22 Or LUBA 457 (1991).

26.1 LUBA Jurisdiction – Generally. Failure to include a jurisdictional statement in the petition for review, as required by OAR 661-10-030(3)(c), is a technical violation of LUBA's rules and does not provide a sufficient basis for dismissing the petition for review. However, because petitioner bears the burden of establishing LUBA's jurisdiction, LUBA will require the petition for review to be amended to include a jurisdictional statement. OAR 661-10-030(4). *Dolan v. City of Tigard*, 22 Or LUBA 820 (1991).

26.1 LUBA Jurisdiction – Generally. Where the standards upon which conceptual development approval was based are changed to disallow the use conceptually approved, and later decisions authorizing a building permit and final development approval for the use are adopted on the basis that the prior standards continue to apply, a petitioner is entitled to challenge the later decisions notwithstanding petitioner's failure to challenge the conceptual development approval. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

26.1 LUBA Jurisdiction – Generally. The land use decision reviewed in a LUBA appeal is the final written decision, not what individual parties, staff or members of the

decision making body may have stated during the course of the proceedings below. *Gray v. Clatsop County*, 22 Or LUBA 270 (1991).

26.1 LUBA Jurisdiction – Generally. Inconsistencies between a decision made by two service districts and a county comprehensive plan and land use regulations do not make the service districts' decision a decision by the county or a *de facto* amendment to the county comprehensive plan. *Price v. Arch Cape Service District*, 22 Or LUBA 807 (1991).

26.1 LUBA Jurisdiction – Generally. Whether the challenged decision exceeded the decision maker's jurisdiction is an issue to be resolved in considering the merits of an appeal. For purposes of determining LUBA's jurisdiction, the sole question is whether the challenged decision falls within the class of decisions over which LUBA has review authority. *Pilling v. LCDC*, 22 Or LUBA 188 (1991).

26.1 LUBA Jurisdiction – Generally. As the party seeking review by LUBA, petitioner has the burden of establishing that LUBA has jurisdiction. *Hamby v. City of Jefferson*, 22 Or LUBA 1 (1991).

26.1 LUBA Jurisdiction – Generally. LUBA does not have authority to take official notice of adjudicative facts, as set out in OEC 201. LUBA's review is limited by ORS 197.830(13)(a) to the record of the proceeding below, except in instances where an evidentiary hearing is authorized by ORS 197.830(13)(b), and where facts outside the record are essential to determining whether LUBA has jurisdiction or whether an appeal is moot. *Blatt v. City of Portland*, 21 Or LUBA 337 (1991).

26.1 LUBA Jurisdiction – Generally. Where petitioners' notice of intent to appeal (1) identifies a decision *applying* the local code, rather than provisions of the local code itself, as the subject of the appeal, and (2) was not filed within 21 days of the adoption of the code provisions, petitioners may not challenge the code provisions in the appeal. *Wickwire v. Clackamas County*, 21 Or LUBA 278 (1991).

26.1 LUBA Jurisdiction – Generally. Where respondent's motion to dismiss for lack of jurisdiction is based solely on the legal nature of the challenged decision, and petitioner does not explain why the local government record would provide any assistance in determining the legal nature of the challenged decision, LUBA will grant respondent's motion to delay filing the record until after the motion to dismiss is resolved. *Goose Hollow Foothills Assoc. v. City of Portland*, 21 Or LUBA 555 (1991).

26.1 LUBA Jurisdiction – Generally. Although a decision rendered in violation of statutory public meeting law requirements may be voided, the circuit court for the county in which the governing body ordinarily meets has jurisdiction, not LUBA. ORS 192.680. *Strawn v. City of Albany*, 21 Or LUBA 172 (1991).

26.1 LUBA Jurisdiction – Generally. Where LUBA lacks jurisdiction, an appeal must either be dismissed or transferred to circuit court pursuant to ORS 19.230. *Sully v. City of Ashland*, 20 Or LUBA 428 (1991).

26.1 LUBA Jurisdiction – Generally. LUBA lacks statutory authority to reconsider its final decisions, and once a final decision is issued the only remedy is an appeal to the Court of Appeals. *Sarti v. City of Lake Oswego*, 20 Or LUBA 562 (1991).

26.1 LUBA Jurisdiction – Generally. Where the Court of Appeals reverses or remands a LUBA decision, the 30 day period specified in ORS 197.850(11) for LUBA to respond commences on the date the appellate court judgment becomes effective. *Byrnes v. City of Hillsboro*, 20 Or LUBA 408 (1991).

26.1 LUBA Jurisdiction – Generally. LUBA's jurisdiction is based on the land use regulations the local government has adopted, not on land use regulations it could have adopted or might yet adopt. *Bartels v. City of Portland*, 20 Or LUBA 303 (1990).

26.1 LUBA Jurisdiction – Generally. Where the notice of intent to appeal identifies as the subject of the appeal a local government decision applying its zoning ordinance to the subject property, not a prior decision rezoning the subject property, and no appeal was filed within 21 days of the prior zone change, LUBA does not have jurisdiction to review the prior zone change. *Sabin v. Clackamas County*, 20 Or LUBA 23 (1990).

26.1 LUBA Jurisdiction – Generally. A local government decision is a land use decision if it meets either (1) the statutory definition in ORS 197.015(10); or (2) the significant impacts test established by *City of Pendleton v. Kerns*, 294 Or 126, 133-134, 653 P2d 996 (1982). *City of Portland v. Multnomah County*, 19 Or LUBA 468 (1990).

26.1 LUBA Jurisdiction – Generally. A challenge to LUBA's jurisdiction may be brought at any time and is not subject to the ten day requirement of OAR 661-10-065(2). *Elliott v. Lane County*, 18 Or LUBA 871 (1990).

26.1 LUBA Jurisdiction – Generally. Where the parties in an appeal proceeding contend the appeal should be dismissed, LUBA will dismiss the appeal, even though the parties contend the appeal should be dismissed for different reasons. *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 795 (1990).

26.1 LUBA Jurisdiction – Generally. LUBA does not have authority to review the SCS's identification of prime farmland for compliance with applicable SCS standards. LUBA simply reviews the *county's* decision for whether the county correctly determined what land the SCS identifies as prime farmland. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).