

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where a county adopts an ordinance that amends its comprehensive plan map in conjunction with a city’s urban growth boundary (UGB) amendment, and the county’s ordinance is submitted in conjunction with the city’s UGB amendment to the Department of Land Conservation and Development for review, under ORS 197.825(2)(c)(A), LUBA does not have jurisdiction to review the county’s decision. *Swalley Irrigation District v. Deschutes County*, 59 Or LUBA 192 (2009).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** ORS 215.780(2) and ORS 197.835(6) and (7) together limit LUBA’s scope of review when considering an appeal of a post-acknowledgement plan amendment to impose reduced minimum lot or parcel sizes in an EFU zone pursuant to ORS 215.780(2) to exclude review for statewide planning goal compliance, where the reduced minimum lot or parcel sizes have already been reviewed for compliance with the statewide planning goals by the Land Conservation and Development Commission under ORS 215.780(2) and found to comply with the statewide planning goals. *Thompson v. Umatilla County*, 54 Or LUBA 531 (2007).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Under former OAR 660-025-0040(2), LUBA has jurisdiction over issues that do not involve compliance with the statewide planning goals. *Gordon v. Polk County*, 53 Or LUBA 618 (2007).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Under 2003 statutes, LCDC and LUBA both have jurisdiction to review land use decisions that are adopted in whole or in part to comply with periodic review. LCDC reviews such decisions to ensure, among other things, that the local government’s plans and land use regulations are “achieving the statewide planning goals.” ORS 197.628(3)(d); OAR 660-025-0070(4). *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LUBA’s scope of review over periodic review land use decisions extends to all legal issues that are properly within LUBA’s statutory scope of review, but it does not include review for compliance with statewide planning goals or other questions that are within LCDC’s scope of review in periodic review. *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LUBA’s scope of review under ORS 197.835(9) must be read together with and is limited by ORS 197.825(2)(c), which excludes periodic review matters over which LCDC has review authority under ORS 197.628 to 197.650. Under those statutes, a city land use decision could be narrowly tailored to comply with a periodic review work task, and still be reversible by LUBA because it exceeds the city’s jurisdiction, is based on an improper construction of a law that LCDC does not consider in periodic review or because the city committed procedural errors in adopting the decision. *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA 691 (2005).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** A Land Conservation and Development Commission (LCDC) periodic review order that merely makes assumptions

about a local ordinance, but does not attempt to resolve an ambiguity, is not identical to an issue before LUBA regarding the proper interpretation of that ambiguous ordinance, and issue preclusion does not bar LUBA's consideration of the interpretive issue. *Flying J. Inc. v. Marion County*, 49 Or LUBA 28 (2005).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** A minor dispute, which was withdrawn before a decision was made, regarding the zoning of 2.2 acres in a Land Conservation and Development Commission (LCDC) periodic review order concerning the rural community designation of a large interchange area is not essential to a final decision on the merits in the order. Therefore, issue preclusion does not bar LUBA's consideration of the issue. *Flying J. Inc. v. Marion County*, 49 Or LUBA 28 (2005).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Goal 14, factors 3 through 7 implicitly require a determination that the sites chosen to be included in an urban growth boundary (UGB) are better than other alternative sites that are also considered for inclusion and rejected. Therefore, a local code provision requiring a demonstration that “the recommended site was better than alternative sites,” does not “go further” or require more than the requirements of Goal 14, and assignments of error concerning that local code provision therefore involve “matters” that fall within the Land Conservation and Development Commission's exclusive jurisdiction in periodic review. *City of West Linn v. Metro*, 49 Or LUBA 403 (2005).

**26.7 LUBA Jurisdiction - Effect of LCDC Proceedings.** If the Metropolitan Service District's authority to amend a regional plan to mandate certain zoning protections for industrial lands were solely a question of whether the regional plan itself prohibits such mandates, that question would likely be an issue that is exclusively within the Land Conservation and Development Commission's exclusive jurisdiction in a pending periodic review of the amendment. However, where the question of whether the regional plan prohibits such mandates is intertwined with the question of whether other legal authorities prohibit such mandates, and LUBA has jurisdiction to consider whether those other legal authorities prohibit such mandates, LUBA also has jurisdiction to consider whether the regional plan prohibits the mandates. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

**26.7 LUBA Jurisdiction - Effect of LCDC Proceedings.** There is nothing in the language of ORS 197.025(1) and 268.385(1) that imposes a higher obligation on the Metropolitan Service District in performing its coordination obligation than is imposed under the Goal 2 coordination obligation. Therefore, in performing periodic review of a regional plan amendment, the Land Conservation and Development Commission will resolve the question of whether the Metropolitan Service District properly coordinated its decision, and LUBA does not have jurisdiction to consider that issue in a LUBA appeal of the same regional plan amendment. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** A county counsel stipulation in a mandamus proceeding zoning of property required the exercise of policy or legal

judgment because the legal effect of an LCDC order on the property's zoning was not clear. *Flying J, Inc. v. Marion County*, 47 Or LUBA 637 (2004).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Even assuming that a county decision in response to a periodic review work task includes matters within LUBA's scope of review, LUBA has no jurisdiction to review the county decision where petitioners fail to appeal the county decision to LUBA within the time specified in ORS 197.830(9). *Colony v. Wallowa County*, 46 Or LUBA 586 (2004).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Assignments of error arguing that an ordinance adopted to satisfy a periodic review work task does not comply with Goals 2 and 14 are matters subject to the exclusive jurisdiction of the Land Conservation and Development Commission. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where county comprehensive plan standards for identifying agricultural land implement the Goal 3 definition of agricultural land, and an evidentiary challenge to a finding under the comprehensive plan standards that certain land is agricultural land is inseparable from the question of whether that land is agricultural land under Goal 3, LUBA lacks jurisdiction to address the challenge under the county's comprehensive plan standards. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** The Land Conservation and Development Commission has exclusive jurisdiction to review allegations that a county's proceedings under periodic review failed to comply with Goal 1 and LCDC's rules for conducting periodic review. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LUBA has exclusive jurisdiction to review allegations that a county's proceedings failed to comply with procedural requirements that are independent of goal or administrative-rule based procedural requirements. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where the challenged decision is adopted to fulfill a periodic review work task, and the issue before LUBA can be framed as either (1) a matter of compliance with a statute, comprehensive plan or land use regulation or (2) a matter of compliance with a statewide planning goal or administrative rule, LUBA has jurisdiction over the issue only if the statutory, plan or code obligation goes beyond or is different from the obligation imposed by the goal or rule. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** An argument that a county comprehensive plan amendment adopted to fulfill a periodic review work task is inconsistent with a city comprehensive plan provision is an issue that is cognizable as a

Goal 2 consistency issue, and thus is an issue that is within LCDC's exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Findings challenges are necessarily derivative of the underlying criteria the findings address. Where the county code requires adoption of findings supporting legislative decisions, whether jurisdiction to review an adequate findings challenge in a legislative decision adopted to fulfill a periodic review work task lies with LUBA or LCDC depends on whether the findings address goal or rule compliance issues subject to LCDC's exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** A local code requirement for findings demonstrating that legislative decisions are “in the public interest and will be of general public benefit” does not implicate any Goal or rule requirements, and thus a challenge that the local government failed to adopt adequate findings addressing that criterion in adopting a decision to fulfill a periodic review work task is subject to LUBA's exclusive jurisdiction. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** 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).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** 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).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** 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).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** In reviewing a land use decision, LUBA's scope of review does not include matters over which LCDC has acknowledgment review authority under ORS 197.251. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426 (2001).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where a transportation plan has been submitted to LCDC for acknowledgment review and LCDC has conducted that review with regard to Goal 12 and the Transportation Planning Rule (TPR), LUBA does not have authority to thereafter review the regional transportation plan for compliance with the TPR. That limit on LUBA’s scope of review is not affected by the fact that the TPR was adopted to implement both Goal 12 and the ORS 197.712(2)(e) obligation concerning public facility plans, where the statutory obligation is not shown to impose transportation planning obligations that are different than those imposed by Goal 12. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426 (2001).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LUBA does not have jurisdiction to review a regional transportation plan to determine whether it is consistent with a regional framework plan consistency requirement, where such consistency is also required by Goal 2 and LCDC has jurisdiction to review the regional framework plan and regional transportation plan for compliance with Goal 2. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426 (2001).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** A regional framework plan requirement for “findings” that a transportation plan is consistent with the regional framework plan is not within LUBA’s scope of review where both plans have been submitted to LCDC for acknowledgment review under ORS 197.251. LCDC’s review for plan-to-plan consistency under Goal 2 either includes review of the “findings” requirement or renders it legally irrelevant. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426 (2001).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where a regional transportation plan that is submitted to LCDC for acknowledgment review under ORS 197.251 is also appealed to LUBA, and the issues raised in the petition for review arguably are within LCDC’s jurisdiction under ORS 197.825(2)(c), it is appropriate to suspend the LUBA appeal for 120 days pursuant to ORS 197.840(1) and (4). *Citizens Against Irresponsible Growth v. Metro*, 39 Or LUBA 807 (2001).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Although a decision may qualify as a land use decision subject to LUBA review, ORS 197.825(2)(c) provides that LUBA lacks jurisdiction to consider statewide planning goal compliance issues in conducting that review, where the challenged decision is also subject to review by LCDC under ORS 197.251. *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LUBA has jurisdiction to resolve goal compliance challenges to quasi-judicial post-acknowledgment plan amendments notwithstanding that those amendments rely on data developed for work program tasks that are undergoing periodic review. *Citizens for Florence v. City of Florence*, 35 Or LUBA 255 (1998).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where the petition for review challenging a post-acknowledgment decision raises an issue concerning the propriety of

the city relying on documents that were prepared for a pending periodic review, the issue of whether ORS 197.644(2) and OAR 660-025-0040 deprive LUBA of jurisdiction to review the challenged decision is necessarily presented and may be included in a state agency brief submitted under ORS 197.830(7). *Citizens for Florence v. City of Florence*, 34 Or LUBA 793 (1998).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** During periodic review, the existing, acknowledged versions of the county's plan and zoning ordinance continue to apply until they are amended as a result of the acknowledgment of a final decision. Where periodic review is ongoing, the county may amend its plan and zoning map by redesignating and rezoning property to any existing acknowledged designation or zone, as long as the amendment does not violate any statute, rule or statewide planning goal, and LUBA has jurisdiction to review such amendments. *Brown v. Jefferson County*, 33 Or LUBA 418 (1997).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Prior to the submission of a petition for review, if LUBA cannot tell whether petitioners' appeal will include issues that do not relate to goal compliance, a motion to dismiss for lack of jurisdiction will not be allowed. *Torgeson v. Clackamas County*, 31 Or LUBA 554 (1996).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LUBA's jurisdiction over appeals of decisions arising out of the periodic review process is limited to matters that do not involve compliance with the goals. *Torgeson v. Clackamas County*, 31 Or LUBA 554 (1996).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where the county converted its periodic review procedures from those established under 1989 statutes to the procedures established by 1991 statutes, and the challenged decisions were "additional work" done by the county as provided for in Oregon Laws 1993, chapter 435, section 1(3), LUBA's jurisdiction over those decisions is governed by the 1991 statute, which grants LCDC exclusive jurisdiction to review completed work program tasks. *Torgeson v. Clackamas County*, 31 Or LUBA 554 (1996).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Under Oregon Laws 1993, chapter 435, section 1, where a county submitted a final periodic review order to DLCD prior to December 31, 1993, and there was no final disposition of the order by that date, the county's final periodic review order was "under review" by DLCD on December 31, 1993. *Torgeson v. Clackamas County*, 31 Or LUBA 554 (1996).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where the notices of intent to appeal a decision adopted by the city as part of a periodic review work program suggest that petitioners intend to raise challenges which are unrelated to goal compliance, LUBA will retain jurisdiction over those issues, and a motion for continuance under ORS 197.840 will be denied. *Lewis v. City of Portland*, 31 Or LUBA 513 (1996).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LCDC does not have exclusive jurisdiction over all issues arising out of a periodic review work program; under OAR 660-25-040(1), LUBA retains jurisdiction over matters that do not involve compliance with the goals. *Lewis v. City of Portland*, 31 Or LUBA 513 (1996).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Under OAR 660-25-040, while LCDC has exclusive authority to review local government work task decisions for goal compliance, LUBA retains jurisdiction to review land use decisions for issues that do not involve goal compliance. *Bice v. Jackson County*, 30 Or LUBA 439 (1995).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** ORS 197.825(2), which excludes from LUBA's jurisdiction those matters over which LCDC has review authority, does not alter LUBA's continuing jurisdiction over non-goal compliance issues. *Bice v. Jackson County*, 30 Or LUBA 439 (1995).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Petitioner's argument that a decision to approve a building permit is a land use decision because the decision requires the application of a LCDC enforcement order fails where the enforcement order does not establish land use standards for the issuance of building permits. *Broderson v. Jackson County*, 28 Or LUBA 645 (1995).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where, under applicable 1991 statutory provisions, (1) a local government elected to proceed with periodic review under the 1989 statutes that were in effect when its periodic review was initiated, and (2) a comprehensive plan and land use regulation amendment adopted as part of such periodic review is appealed to LUBA, LUBA's review is governed by the statutes in effect in 1989. *Williams v. Clackamas County*, 27 Or LUBA 602 (1994).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Under applicable 1989 statutory provisions, matters subject to periodic review by DLCD were excluded from LUBA's jurisdiction. Under ORS 197.640(3)(1989), where a plan or land use regulation amendment is subject to periodic review, DLCD has review authority over matters concerning the amendment's compliance with the statewide planning goals. *Williams v. Clackamas County*, 27 Or LUBA 602 (1994).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LUBA does not have jurisdiction to review LCDC acknowledgment orders. ORS 197.825(2)(c). Subject to review by the appellate courts, once an LCDC acknowledgment order is issued, it forecloses an appeal to LUBA on any issue that was raised or could have been raised in the LCDC acknowledgment proceedings concerning goal compliance. *Redland/Viola CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** LUBA no longer has authority to defer its review of appeals challenging decisions submitted for LCDC review under the pre-1991 periodic review process, because Oregon Laws 1993, chapter 435, repeals the statute authorizing LCDC continuation of previously initiated periodic reviews under the

pre-1991 periodic review process. *Williams v. Clackamas County*, 26 Or LUBA 612 (19/93).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where the challenged local government decision is submitted to DLCD for periodic review pursuant to ORS 197.640 to 197.650(1989), LUBA only has review authority over those issues raised in the petition for review that are not subject to periodic review. *Williams v. Clackamas County*, 25 Or LUBA 812 (1993).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where it is unclear whether issues other than ones subject to periodic review will be raised in the petition for review, LUBA will not dismiss the appeal on the basis that the challenged decision has been submitted to DLCD for periodic review, but rather will defer its consideration of the challenged decision pending completion of periodic review. *Williams v. Clackamas County*, 25 Or LUBA 812 (1993).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** In periodic review, DLCD is not limited in its goal compliance review of post-acknowledgment plan and land use regulation amendments to particular goal requirements that may have triggered a periodic review factor under ORS 197.640(3) (1989). Therefore, while LUBA has concurrent jurisdiction to review post-acknowledgment plan and land use regulation amendments submitted for periodic review, under ORS 197.825(2)(c) (1989) LUBA's scope of review over such amendments does not include review for goal compliance. *1000 Friends of Oregon v. City of Troutdale*, 23 Or LUBA 219 (1992).

**26.7 LUBA Jurisdiction – Effect of LCDC Proceedings.** Where periodic review of comprehensive plan and land use regulation amendments is pending before the Department of Land Conservation and Development (DLCD) and those amendments are also appealed to LUBA, ORS 197.840(1)(a) and (4) provide that LUBA may defer its review until DLCD completes periodic review. *1000 Friends of Oregon v. City of Troutdale*, 20 Or LUBA 563 (1991).