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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

RIVER ESTATES, LLC., )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
UMATILLA COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
CITY OF UMATILLA, )  
 )  
Intervenor-Respondent. )

LUBA No. 98-095  
FINAL OPINION  
AND ORDER

Appeal from Umatilla County.  
Edward P. Fitch, Redmond, represented petitioner.  
William Jones, Pendleton, represented respondent.  
Gary Luisi, Hermiston, represented intervenor-respondent.

HOLSTUN, Board Member; GUSTAFSON, Board Chair; and HANNA, Board Member, participated in the decision.

TRANSFERRED 10/29/98

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Holstun.

2 **DECISION**

3 The county decisions challenged in this appeal include: (1) an access permit for  
4 petitioner's subdivision, which allows access to a county road; and (2) an irrevocable consent  
5 agreement, whereby petitioner agrees to pay or participate in payment of certain costs that  
6 may be associated with improvement of the county road in the future. Petitioner signed the  
7 irrevocable consent agreement under protest and appeals both decisions to this Board.  
8 Petitioner filed a related mandamus and declaratory judgment proceeding in Umatilla County  
9 Circuit Court, challenging the county's actions regarding county road access for the  
10 subdivision.

11 Under ORS 197.825(1), LUBA has exclusive jurisdiction, subject to limitations  
12 stated in ORS 197.825(2) and (3), over the review of "land use decisions" and "limited land  
13 use decisions" that meet either the statutory definitions in ORS 197.015(10) and (12), or the  
14 significant impact test referred to in Petersen v. Klamath Falls, 279 Or 249, 566 P2d 1193  
15 (1977) and City of Pendleton v. Kerns, 294 Or 126, 653 P2d 992 (1982). As the party  
16 seeking LUBA review, the burden is on petitioner to establish that the appealed decision is a  
17 land use decision. Billington v. Polk County, 299 Or 471, 475, 703 P2d 232 (1985); City of  
18 Portland v. Multnomah County, 19 Or LUBA 468, 471 (1990); Portland Oil Service Co. v.  
19 City of Beaverton, 16 Or LUBA 255, 260 (1987).

20 Petitioner does not argue that LUBA has jurisdiction in this matter. Rather, petitioner  
21 requests that LUBA determine that it does not have jurisdiction in this appeal. Petitioner  
22 contends that all land use issues related to the challenged decisions were resolved in separate  
23 land use decisions concerning the disputed subdivision. Those separate land use decisions  
24 granting preliminary plat and final plat approvals were not appealed to LUBA. Petitioner  
25 argues that the county decisions challenged in this appeal are not governed by the county's  
26 land use procedures and that none of the land use standards identified at ORS 197.015(10)

1 and (12) apply. Respondent and intervenor-respondent join petitioner in arguing that the  
2 challenged decisions are not land use decisions, because they do not fall within the statutory  
3 definition of "land use decision" or "limited land use decision" in ORS 197.015(10) and (12).

4 We agree the challenged decision is not a "land use decision" or "limited land use  
5 decision" as those terms are defined by ORS 197.015(10) and (12). In addition, based on our  
6 review of the parties' arguments and the record, we conclude the challenged decisions are not  
7 significant impact test land use decisions.

8 All parties request that we transfer this appeal to Umatilla County Circuit Court,  
9 pursuant to ORS 34.102(4). See OAR 661-10-075(11)(a).<sup>1</sup> The request is granted, and this  
10 appeal is transferred to Umatilla County Circuit Court.

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<sup>1</sup>Although our rule refers to ORS 19.230, that statute was renumbered in 1997 and now appears at ORS 34.102.