

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

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4                                   GLENWOOD 2006, LLC,  
5   *Petitioner,*

6  
7   vs.

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9                                   CITY OF BEAVERTON,  
10   *Respondent,*

11   and

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14                                   OREGON BEVERAGE RECYCLING  
15   COOPERATIVE,  
16   *Intervenor-Respondent.*

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18   LUBA No. 2017-026

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20   FINAL OPINION  
21   AND ORDER

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23                                   Appeal from City of Beaverton.

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25                                   E. Michael Connors, Portland, filed the petition for review and argued on  
26 behalf of petitioner. With him on the brief was Hathaway Larson LLP.

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28                                   Peter Livingston, Beaverton City Attorney’s Office, Beaverton, filed a  
29 joint response brief on behalf of respondent.

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31                                   Michael Robinson and Seth King, Portland, filed a joint response brief  
32 and Seth King argued on behalf of intervenor-respondent. With them on the  
33 brief was Perkins Coie LLP.

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35                                   HOLSTUN Board Member; RYAN, Board Chair; BASSHAM, Board  
36 Member, participated in the decision.

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38                                   TRANSFERRED                                   09/21/2017

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

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**INTRODUCTION**

In this appeal (LUBA No. 2017-026), petitioner appeals a building permit decision. In LUBA No. 2017-027 petitioner separately appealed a closely related design review decision. LUBA previously consolidated those appeals for review.

**MOTION TO DISMISS**

Intervenor moves to dismiss this appeal, arguing that the building permit is not a land use decision that is subject to LUBA review. As relevant here, LUBA’s jurisdiction is limited to land use decisions. ORS 197.825(1). As potentially relevant here, under ORS 197.015(10)(a), a decision is a land use decision if it is a “final decision” “that concerns the application \* \* \* of” “[a] comprehensive plan” or “[a] land use regulation. A decision is a land use decision if it either applies or should have applied a land use regulation. *Jaqua v. City of Springfield*, 46 Or LUBA 566, 574 (2004).

Intervenor argues the city applied no land use standards in approving the building permit because all relevant land use standards were applied by a closely related design review decision that is the subject of LUBA No. 2017-027, with the result that the building permit does not qualify as a land use decision. *Flowers v. Klamath County*, 17 Or LUBA 1078, 1088 (1989). We issue this date a final opinion and order in LUBA No. 2017-027 remanding that design review decision to the city. We agree all land use standards either were

1 applied, or as explained in more detail in our decision in LUBA No. 2017-027,  
2 should have been applied in the design review decision. Because the building  
3 permit did not apply and does not appear to have been required to apply any of  
4 the kinds of land use standards identified at ORS 197.015(10)(a), and because  
5 it appears to fall squarely within the exception to the statutory definition of  
6 land use decision at ORS 197.015(10)(b)(B), we do not have jurisdiction to  
7 review the building permit decision.

8 Petitioner moves to transfer this appeal to circuit court if LUBA  
9 determines that it lacks jurisdiction to review the building permit decision.  
10 OAR 661-010-0075(11)(a) and (b). That motion is granted.

11 LUBA No. 2017-026 is bifurcated from LUBA No. 2017-027, and  
12 LUBA No. 2017-026 is transferred to Washington County Circuit Court.