

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

3
4 STACEY McLAUGHLIN, R. FRANCIS
5 EATHERINGTON, PAMELA BROWN
6 ORDWAY and JOHN CLARKE,
7 *Petitioners,*

8
9 vs.

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11 DOUGLAS COUNTY,
12 *Respondent,*

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14 and

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16 PACIFIC CONNECTOR GAS PIPELINE, LP,
17 *Intervenor-Respondent.*

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19 LUBA No. 2017-051

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21 FINAL OPINION
22 AND ORDER

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24 Appeal from Douglas County.

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26 Stacey McLaughlin, Myrtle Creek, R. Francis Eatherington, Roseburg,
27 Pamela Brown Ordway, Portland and John Clarke, Winston, represented
28 themselves.

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30 Paul E. Meyer, Douglas County Legal Counsel, Roseburg, represented
31 the respondent.

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33 Seth J. King, Portland, represented intervenor-respondent.

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

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38 TRANSFERRED 09/13/2017

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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NATURE OF THE DECISION

Petitioners appeal a decision granting a one-year extension for a conditional use permit for a natural gas pipeline, located on land zoned for agricultural or forest use.

JURISDICTION

In an order dated July 20, 2017, the Board questioned whether LUBA has jurisdiction over the challenged decision, pursuant to OAR 660-033-0140(3).¹ The Board provided petitioners 14 days to file memoranda or motions regarding LUBA’s jurisdiction.

¹ OAR 660-033-0140 provides, in relevant part:

- “(1) “[A] discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land * * * is void two years from the date of the final decision if the development action is not initiated in that period.
- “(2) A county may grant one extension period of up to 12 months if:
 - “(a) An applicant makes a written request for an extension of the development approval period;
 - “(b) The request is submitted to the county prior to the expiration of the approval period;
 - “(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

1 On August 1, 2017, petitioners filed a motion to transfer the appeal to
2 circuit court, pursuant to OAR 661-010-0075(11). However, petitioners have
3 filed no pleading arguing that LUBA has jurisdiction over the appeal. On
4 August 15, 2017, intervenor-respondent submitted a pleading arguing that
5 LUBA lacks jurisdiction over the appeal, for the reasons set out in *McLaughlin*
6 *v. Douglas County*, __ Or LUBA __ (LUBA No. 2017-008, July 20, 2017)
7 (transferring to circuit court an appeal of an earlier permit extension for the
8 same permit at issue in the present appeal).

9 Petitioners have the ultimate burden of demonstrating that LUBA has
10 jurisdiction over the appeal. We conclude that petitioners have not met that
11 burden, and that pursuant to OAR 660-033-0140(3), the decision is not a land
12 use decision described in ORS 197.015, and accordingly LUBA lacks subject-
13 matter jurisdiction over the challenged permit extension decision.

“(d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

“(3) *Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.*

“(4) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.” (Emphasis added).

- 1 Accordingly, petitioners' motion to transfer the appeal to Douglas County
- 2 Circuit Court is granted. OAR 661-010-0075(11).
- 3 The appeal is transferred.