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

AKUM INVESTMENT GROUP, LLC,
Petitioner,

vs.

CITY OF PORTLAND,
Respondent.

LUBA Nos. 2025-067/068

FINAL OPINION
AND ORDER

Appeal from City of Portland.

Wendie L. Kellington represented petitioner.

Robert L. Taylor represented respondent.

BASSHAM, Board Member; ZAMUDIO, Board Chair, participated in the decision.

WILSON, Board Member, did not participate in the decision.

TRANSFERRED 01/06/25

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

NATURE OF THE DECISIONS

In these consolidated appeals, petitioner appeals two "notes" that city building permit personnel placed in a digital file on petitioner's building permit application to construct a restaurant with a nonconforming drive-through. The two notes instruct city staff not to schedule any inspections on the building permit until petitioner submits and receives approval for a revised building permit removing the drive-through.

MOTION TO DISMISS

The city moves to dismiss these appeals for lack of jurisdiction on the basis that the challenged city actions are not land use decisions subject to LUBA review. We grant the motion to dismiss for the reasons that follow.

A. Background

The city moved to dismiss and we suspended these appeals prior to the city transmitting a record. We take the following background from the parties' pleadings in these appeals, and from the pleadings and the final opinion in a companion appeal filed by petitioner, *Akum Investments Group, LLC. v. City of Portland*, LUBA No 2025-061 (Jan 6, 2026).[1]

---

[1] In a separate final opinion issued this date, we agree with the city that we lack jurisdiction over LUBA No. 2025-061, because petitioner is currently exercising a remedy available by right, for purposes of ORS 197.825(2)(a), namely, a pending application that petitioner filed under Portland City Code 33.258.075, seeking what is known under the city's land use code as Legal Nonconforming Status Review. *Akum Investment Group, LLC v. City of Portland*, LUBA No 2025-061 (Jan 6, 2026). ORS 197.825(2)(a) provides that

In 2017, petitioner purchased an existing Dairy Queen restaurant with a drive-through, on property zoned Commercial/Mixed Use 2 (CM2). The CM2 zone allows restaurants as an outright permitted use, but does not allow new drive-through facilities. Under Portland City Code (PCC) 33.130.260.C.2, existing drive-through facilities may continue, as a nonconforming use.[2] The

---

LUBA's jurisdiction "[i]s limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning [LUBA] for review[.]"

[2] PCC 33.130.260.C provides:

> "The following regulations apply to drive-through facilities in the CM1, CM2 and CM3 zones:
>
> "1. New drive-through facilities are prohibited; and
>
> "2. Existing drive-through facilities are allowed. Existing facilities can be rebuilt, expanded, or relocated on the site. The standards for drive-through facilities are stated in Chapter 33.224, Drive-Through Facilities. If the use with the drive-through facility is discontinued for 3 continuous years, reestablishment of the drive-through facility is prohibited. If the use ceases operation, even if the structure or materials related to the use remain, the use has been discontinued. A list of the standard evidence that can be provided to prove that the use has been maintained over time can be found in Subsection 33.258.038.B. If the applicant provides standard evidence from the list, the Director of [Portland Permitting and Development (PP&D)] will determine if the evidence is satisfactory. If the applicant provides evidence other than the standard evidence listed, a Determination of Legal Nonconforming Status is required."

right to continue that nonconforming use, however, may be lost if the use is "discontinued" or not "maintained" for a period of three years. *Id.*

In 2018, petitioner applied to Portland Permitting and Development (PP&D), a city bureau responsible for issuing building permits, for a building permit to replace the existing restaurant with a new Dairy Queen restaurant with a drive-through. On October 14, 2019, PP&D issued, at petitioner's request, a permit to demolish the existing structure. Petitioner subsequently demolished the structure. Due to various delays, in part due to the COVID-19 pandemic, PP&D did not issue a building permit for the new structure until October 11, 2022. The October 2022 building permit had a three-year expiration date, and was originally set to expire on October 14, 2025. Under the city building code, building permits are deemed abandoned if after 180 days there is no activity on the permit, but during the pandemic the city suspended enforcement of this requirement, until December 2024. In issuing the October 2022 building permit, PP&D advised petitioner that the three-year discontinuance period for the nonconforming drive-through would ordinarily expire three years after the city issued the demolition permit, that is, on October 14, 2022. However, PP&D advised petitioner it would essentially extend the nonconforming use discontinuance period for the three-year life of the building permit, so that if the restaurant and drive-through are completed by October 11, 2025, then the city would not regard the nonconforming drive-through as discontinued, notwithstanding that more than

three years has elapsed since the drive-through ceased operation and was demolished.

In April 2023, petitioner requested certain design revisions to the building permit, which the city approved on April 2, 2025. Petitioner requested an initial inspection of the site, which occurred on April 17, 2025. At some point thereafter, petitioner commenced construction of the restaurant.

On September 17, 2025, the city interim director of PP&D, sent petitioner a letter advising it that, according to city records, the nonconforming use for the drive-through would expire on October 11, 2025, three years from the date the October 11, 2022 building permit was issued.[3] The September 17, 2025 letter stated, in part:

> "[A]s of today, no drive-through has been constructed or placed into operation. Unless the drive-through is constructed and operational before October 11, 2025, the nonconforming rights associated with this use will expire and cannot be re-established.
>
> "To allow additional time to revise the project, your permit – originally set to expire on October 14, 2025[4] – has been

---

[3] This was not the first time that the city had reminded petitioner that the right to construct the nonconforming drive-through would expire if the building permit expired. The city rendered similar notice in a July 28, 2022 email to petitioner. LUBA No 2025-061 Response to Motion to Dismiss in LUBA Ex 4, at 2.

[4] For reasons not clear to us, the September 17, 2025 letter cites to both October 11, 2025 and October 14, 2025 as the critical dates of expiration. October 11, 2025 presumably represents the original date of expiration for the building permit. The October 14, 2025 date may refer to the extended three-year

> granted a final six-month extension. This extension is intended to give you time to submit and receive approval for a Revision removing the drive-through elements." Motion to Dismiss Ex 1, at 8.

Subsequently, petitioner attempted to schedule an inspection of the restaurant's foundation footings. However, as explained below, city building permit staff had effectively blocked petitioner from scheduling any inspections, until the building permit was revised to remove the drive-through. As we understand it, petitioner requested the foundation inspection because it believed that obtaining an approved inspection would automatically extend the building permit expiration period by 180 days, and along with it, extend the discontinuance period for the non-conforming drive-through for an equal period. In its response, petitioner explains that under PCC 24.10.070.J.2.b – a building permit regulation administered by PP&D – approval of an inspection automatically extends a permit's expiration date by 180 days. In the declaration attached to its response, petitioner's managing member states that they "understood that maintaining the building permit was all that the City required to preserve my right to rebuild and operate the restaurant's drive-through." Response to Motion to Dismiss Ex A, at 5.

---

discontinuance period, that was extended when the October 11, 2022 building permit was issued. Or it may be based on the date that petitioner "picked up" the October 11, 2022 building permit from the city. As far as we can tell, greater clarity on these points is not necessary to resolve the jurisdictional dispute before us and we do not address it further.

However, the city did not share petitioner's view that extensions of the building permit would also automatically extend the discontinuance period for the nonconforming drive-through. In the September 17, 2025 letter, the interim director clarified that in 2022 the city had extended the nonconforming status discontinuance period only for the initial three-year building permit expiration period. The September 17, 2025 letter made it clear that any subsequent extension of the building permit would *not* extend the discontinuance period for the drive-through.[5] The interim director granted an additional six-month extension for the building permit, but only so petitioner could submit a revised building permit application removing the drive-through.

We turn now to the facts surrounding the two decisions at issue in the present consolidated appeals. On September 29, 2025, a supervisor in the commercial inspections unit of PP&D added a comment in the city's computer program for managing building permits, called AMANDA, in the digital file for petitioner's building permit. Under the AMANDA program, applicants can schedule building permit inspections by either calling an automated voice response system or filing a request online via a city website. The comment states:

> "9/29/2025 * * * Inspections shall not be performed until a Revision to remove the Drive Through elements on the plan has been approved. Please contact [a PP&D supervisor] if an inspection is requested. I have added a fee of $1000 to the permit to stop

---

[5] As noted, the September 17, 2025 decision is the subject of a separate appeal.

> inspections from being requested. The fee is removable once the revision has been approved." LUBA No 2025-068 Notice of Intent to Appeal Ex 1.

In a declaration attached to the city's motion to dismiss, the supervisor states that the fee was entered to reflect that revisions to the building permit are required before an inspection can occur, consistent with the September 17, 2025 letter. Motion to Dismiss Dec Morris, at 2. The declaration explains that because AMANDA does not have a mechanism to stop inspection requests when additional building permit revisions are needed, it is routine practice for PP&D staff to enter "fees" into AMANDA to stop the system from accepting requests for inspections. *Id.* If the file shows that fees are due, AMANDA will not schedule an inspection. *Id.* According to the declaration, the fee serves as a flag that prevents scheduling of an inspection without the applicant speaking with a PP&D employee, but it is not an actual fee that would be assessed against the applicant. *Id.*

On October 8, 2025, a permit technician removed the $1000 fee, based apparently on a misunderstanding that the permit had been revised. Petitioner was able to schedule an inspection for the foundation footings for the following day, October 9, 2025. On that date a senior commercial inspector spoke with petitioner's representative, and verbally advised that there would be no inspection until the building permit is revised to remove the nonconforming drive-through.

On October 13, 2025, the PD&D supervisor added another note to petitioner's AMANDA file, this time including a $10,000 fee. The October 13, 2025 comment stated:

> "10/13/2025 * * * I have added a fee of $10,000 to the permit. This fee can be cancelled only with [planning staff] approval. Inspections cannot be requested on this project until a Revision to remove the drive through elements has been issued." LUBA No 2025-067 Notice of Intent to Appeal, Ex 1.

On October 22, 2025, petitioner's attorney obtained copies of the September 29, 2025 note and the October 13, 2025 note. On October 23, 2025, petitioner appealed the September 29, 2023 note to LUBA, which appeal was assigned LUBA No. 2025-068. On the same date, petitioner appealed the October 13, 2025 note to LUBA, which appeal was assigned LUBA No. 2025-067. LUBA later granted petitioner's motion to consolidate LUBA Nos. 2025-067 and 2026-068, as closely related decisions.

B. Jurisdiction

The city moves to dismiss both of these consolidated appeals, arguing that neither the September 29, 2025 note nor the October 13, 2025 note are subject to LUBA's jurisdiction because they are not "land use decisions" as defined at ORS 197.015(10)(a). The city also argues that the appeal of the September 29, 2025 note was untimely filed, pursuant to ORS 197.830(9).

1. Land Use Decision

As relevant here, ORS 197.825(1) limits LUBA's jurisdiction to review of "land use decisions," as defined at ORS 197.015(10)(a). Under that definition, a "land use decision" includes a "final decision or determination made by a local government or special district that concerns the adoption, amendment or application of[,]" among other things, "a land use regulation[.]" ORS 197.015(10)(a)(A)(iii). In turn, ORS 197.015(11) defines "land use regulation" to mean "any local government zoning ordinance * * * or similar general ordinance establishing standards for implementing a comprehensive plan." The city's land use regulations are generally codified at PCC chapter 33, and, as noted, the city's building code regulations are codified at PCC chapter 24.

The city does not dispute that the September 17, 2025 letter, at issue in LUBA No. 2025-061, concerns the application of at least one "land use regulation," namely PCC 33.130.260.C, quoted above. However, the city argues that the September 29, 2025 note and the October 13, 2025 note that the PP&D supervisor entered into the city's AMANDA system do not concern the application of any land use regulation in PCC chapter 33, or elsewhere. The city argues that to "concern" the application of a land use regulation, the decision-maker must either actually apply a land use regulation in the decision, or the decision-maker must be legally required to apply a land use regulation to the decision. *Kaye v. Marion County*, 58 Or LUBA 680, 682 (2009) (citing *Dorall v. Coos County*, 53 Or LUBA 32, 34 (2006)). The city argues that in entering the

challenged notes the PP&D supervisor neither applied, nor was legally required to apply, any land use regulation.

Further, the city argues that the supervisor entered the notes only to ensure that staff acted consistently with the September 17, 2025 letter, which, as indicated, extended the building permit expiration period so that petitioner could submit a revised building permit without the nonconforming drive-through. The city argues that to the extent the notes "concerned" the application of PCC 33.130.260.C or any other land use regulation, they did so only derivatively, to implement the September 17, 2025 letter, not as an independent application of any land use regulation. The city also argues that, as defined by ORS 197.015(10)(a)(A), a land use decision must be a "final decision" and the decisions to enter the notes into AMANDA are not "final" decisions binding on the city in any sense. Rather, they are simply temporary and easily removed file notations, and for that additional reason are not "land use decisions."

In its response, petitioner assigns malign motives and practices to PP&D and city planning staff, arguing that the staff impermissibly sought to force petitioner to abandon the nonconforming drive-through, by weaponizing the city's building permit authority to eliminate the shield against discontinuance that the building permit offered while valid. However, our analysis will focus on the jurisdictional question, specifically, whether petitioner has met its ultimate burden of demonstrating that the challenged notes concern the application of a land use regulation, and thus constitute land use decisions within the meaning of

ORS 197.015(10)(a). If not, then jurisdiction to review petitioner's challenges to the city's actions lies elsewhere than with LUBA.

Petitioner argues that the city does not cite any building code regulations at PCC chapter 24 that authorize PP&D staff to block inspections on approved, unexpired building permits. Petitioner cites a declaration of its attorney, recounting a conversation with a PP&D inspections supervisor, in which the supervisor stated that the challenged notes were intended to block inspections from occurring, based on "'land use.'" LUBA No 2025-067 Notice of Intent to Appeal Ex 3, at 2. Seizing on that phrase "land use," petitioner argues that the city has admitted that the motivation for its actions in blocking inspections was its land use regulations, presumably its regulations governing discontinuance of nonconforming drive-throughs.

Petitioner cites *Terraces Condo. Assn. v. City of Portland*, 110 Or App 471, 476-77 (1992), for the proposition that where the challenged decision "obviously entail[s]" the application of a land use regulation, the decision concerns the application of that regulation, even if the decision does not cite the regulation concerned. Petitioner argues that, unlike building code regulations, which are supposed to be clear and objective and not require interpretation, the city's nonconforming land use regulations regarding discontinuance and drive-throughs are ambiguous and require interpretation. According to petitioner, when the PP&D supervisor entered the notes into AMANDA to block inspections, those actions necessarily "concerned" the application and interpretation of the

city's ambiguous land use regulations regarding discontinuance of nonconforming drive-throughs.

Terraces Condo. Assn. involved a city council decision interpreting two variance decisions to resolve an ambiguity regarding the scope of the variances allowed, in the course of which LUBA and the court concluded the city council necessarily applied the land use regulations from which the variances departed, as well as the land use regulations governing variances. In the present case, petitioner does not identify any specific land use regulation that the PP&D supervisor *necessarily* applied or interpreted, or was *required* to apply or interpret, in deciding to halt further inspections on the building permit until the permit was revised.

Based on the current record, it is reasonably clear that the PP&D supervisor decided to halt further inspections on the building permit in order to "reflect that revisions are required before an inspection can occur, consistent with [the] September 17, 2025 letter." Motion to Dismiss Dec Morris, at 2. The city argues that the actions of the PP&D supervisor in entering the two notes was simply an attempt to implement the September 17, 2025 letter, which the city characterizes as a land use decision. The city cites two LUBA opinions for the proposition that, when a local government applies land use regulations to issue a land use decision, a subsequent decision that ministerially implements that land use decision is not itself a land use decision. *See Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691, 694-95 (1999) (dismissing an appeal of a denial of

building permit based on earlier land use decision); *Babbit v. City of Portland*, 41 Or LUBA 151, 156-58 (2002) (finding a fee waiver decision reiterating an earlier un-appealed decision was outside of LUBA's jurisidiction); *see also Marick v. City of Lake Oswego*, LUBA Nos 2022-031/032 (Nov 1, 2022), *aff'd*, 324 Or App 181 (2023) (nonprecedential memorandum opinion) (a building permit to rebuild a nonconforming dwelling is excluded from the ORS 197.015(10)(a) definition of land use decision, notwithstanding that it references the nonconforming status of the dwelling, where the references simply reflect determinations made in prior land use decisions).[6]

Petitioner responds that *Columbia Hills Development Co.* and *Babbitt* are distinguishable, because they involve decisions that are limited to implementing or reiterating an earlier determination in a land use decision. In the present case, petitioner argues that the September 17, 2025 letter did not *require* PP&D to block further inspections; that was apparently a decision that PP&D made independently, on its own authority. In addition, petitioner notes that the

---

[6] In *Marick*, we concluded that the building permit was subject to the exclusion at ORS 197.015(10)(b)(B), for a decision that approves or denies a building permit issued under clear and objective land use standards. Essentially, because the building permit simply reflected land use determinations made in earlier land use decisions, the building permit was not rendered under any land use standards that would remove it from the scope of the exclusion at ORS 197.015(10)(b)(B). In the present case, the city makes no argument under ORS 197.015(10)(b)(B) and we consider it no further, other than to observe that the city's arguments could possibly also be framed under that exclusion.

September 17, 2025 letter actually left open the possibility that petitioner could complete construction of the restaurant and drive-through prior to expiration of the building permit. As noted, the September 17, 2025 letter states that "[u]nless the drive-through is constructed and operational before October 11, 2025, the nonconforming rights associated with this use will expire and cannot be re-established." Motion to Dismiss Ex 1, at 8. Petitioner argues that the PP&D supervisor effectively foreclosed that potential option, however theoretical, of completing construction prior to October 11, 2025, by blocking the inspections that would be necessary steps toward completing the use and commencing operation of the drive-through.[7]

The September 17, 2025 letter determined that the building permit to allow for a drive-through would either be significantly revised or, if not revised, would automatically expire after the six-month extension granted. While the September 17, 2025 letter did not dictate that PP&D should refuse to conduct inspections on the existing, unrevised building permit, we agree with the city that the challenged PP&D actions implement the September 17, 2025 letter. Based on the September 17, 2025 letter, the PP&D supervisor decided to follow the "routine practice" of entering fees into AMANDA in order to prevent the applicant from requesting inspections on a building permit that, the September 17, 2025 letter determined,

[7] Petitioner does not argue that it was actually feasible to complete construction and commence operations between September 29, 2025, and October 11, 2025, even if the inspection blocks were not in place.

can go forward only if and after the permit is significantly revised. Motion to Dismiss Dec Morris, at 2. Petitioner does not identify any purpose that would be served by PP&D conducting building code inspections on an existing building permit that would either be significantly revised or, if not revised, expire, pursuant to the September 17, 2025 letter.

Even if the PP&D supervisor's actions in blocking inspections went beyond an implementation of the September 17, 2025 letter, it does not follow that the action of blocking inspections necessarily involved the application or interpretation of a land use regulation. Petitioner argues that PCC chapter 24 includes no regulations expressly authorizing PP&D to block inspections, and that may or may not be the case. As noted, such regulations are not land use regulations as defined at ORS 197.015(11), and the application, interpretation, or violation of PCC chapter 24 regulations does nothing to demonstrate that the city's actions are land use decisions as defined at ORS 197.015(10)(a). The purported absence of any PCC chapter 24 provisions that expressly authorize PP&D to block inspections does not mean, as petitioner suggests, that the authority or basis for blocking inspections must therefore lie within PCC chapter 33, or that the PP&D supervisor necessarily relied on any land use regulations in PCC chapter 33 in deciding to block inspections.

Petitioner has the burden of demonstrating LUBA's jurisdiction, which requires in the present instance that, at a minimum, petitioner identify at least one land use regulation in PCC chapter 33 that the PP&D supervisor applied in

deciding to block inspections, or that the supervisor should have applied. *See Billington v. Polk County*, 299 Or 471, 475, 703 P2d 232 (1985) (petitioners bear the burden of establishing that LUBA has jurisdiction to review the challenged decision). Petitioner cites no such land use regulation in PCC chapter 33. Petitioner does not, for example, argue that the PP&D supervisor's decision to block inspections independently concerned the application of PCC 33.130.260.C, which as noted above, addresses discontinuance of nonconforming drive-throughs.

We agree with the city that, to the extent the PP&D supervisor's decisions to block inspections implemented the September 17, 2025 letter, the supervisor's decisions did not independently apply or interpret any land use regulation, and for that reason the challenged decisions do not constitute land use decisions. And, to the extent the supervisor's decisions to block inspections went beyond the requirements of the September 17, 2025 letter, petitioner has not established that the supervisor's actions were based on the application of any land use regulation. That is, petitioner has not established that in deciding to block inspections pending revision of the permit, the PP&D supervisor either applied a land use regulation such as PCC 33.130.260.C or was legally required to apply any land use regulation. Accordingly, we agree with the city that the challenged decisions are not land use decisions as defined at ORS 197.015(10)(a), and therefore are not subject to our jurisdiction under that statute.

2. Significant Impact Land Use Decision

In the alternative, petitioner argues that if the challenged decisions are not statutory land use decisions, they nonetheless fall within LUBA's jurisdiction under the so-called "significant impacts" test articulated in *Billington*, 299 Or at 478, and, more recently, in cases such as *Marks v. LCDC*, 327 Or App 708, 536 P3d 995 (2023), *Akiyama v. Tillamook County*, 333 Or App 315, 554 P3d 268, *rev den*, 373 Or 154 (2024), and *Neice v. Prosper Portland*, 334 Or App 735, 556 P3d 1065 (2024). Under these cases, a petitioner may invoke LUBA's jurisdiction over certain decisions that do not meet the statutory test (*i.e.*, do not concern the application, etc. of a land use regulation, etc.), if the petitioner establishes that the decision is nonetheless likely to have a significant impact on present or future land use, or otherwise significantly change the land use status quo. In addition, a petitioner seeking LUBA's review under the significant impacts test must identify what non-land use standards apply to the decision, and demonstrate that those non-land use standards have some bearing or relationship to the use of land. *Northwest Trail Alliance v. City of Portland*, 71 Or LUBA 339, 346 (2015).

Here, petitioner argues that the city's actions in blocking inspections effectively revoked petitioner's building permit for a restaurant with a nonconforming drive-through, causing petitioner substantial financial injury and rendering the project economically unviable, because a drive-through is essential to retain petitioner's franchise. Because the city's actions effectively prevent the

development of the subject property allowed under the building permit, petitioner argues that those actions significantly impact present and future land use of the property, changing the land use status quo.

However, petitioner has not established that the impacts it identifies are the result of the PP&D supervisor's decision *to block inspections*. The alleged impacts are, if anything, the proximate results of the September 17, 2025 letter.

Blocking inspections also effectively prevented petitioner from attempting to complete construction, pass all required inspections, and commence operation of the drive-through prior to October 11, 2025, an option that the September 17, 2025 letter seemed to leave open. However, under the significant impacts test, the identified impacts resulting from the decision must be likely to occur, not mere speculation. *Phillips v. Polk County*, LUBA No 2023-014 (Apr 13, 2023), *aff'd*, 328 Or App 543 (2023) (nonprecedential memorandum opinion), *rev den*, 372 Or 437 (2024) (slip op at 10). Petitioner does not argue that, in the absence of the inspection blocks starting September 29, 2025, petitioner could have completed construction and resumed operation of the drive-through prior to October 11, 2025.

Finally, petitioner does not identify what non-land use standards LUBA would apply, if LUBA reviewed the decisions to block inspections under the significant impacts test, or demonstrate that any applicable non-land use standards have some bearing or relationship to the use of land. *Northwest Trail Alliance*, 71 Or LUBA at 346; *see also Arbor Lodge Neighborhood Assoc. v. City*

of Portland, 81 Or LUBA 378, 383-84 (2020) (a city decision to extend building permits did not have significant impact on present or future land use because the extensions did not alter land uses allowed in the zone and did not have a relationship to the use of land).

In sum, petitioner has not demonstrated a basis for LUBA to exercise jurisdiction over these appeals under the significant impacts test.

3. Timely Appeal of the September 29, 2025 note

The city also argues that, under ORS 197.830(9), petitioner must appeal a land use decision to LUBA within 21 days of the date the decision becomes final, and that petitioner's appeal of the September 29, 2025 decision was filed more than 21 days after September 29, 2025. Accordingly, the city requests that the appeal of the September 29, 2025 decision be dismissed, as untimely filed.

Petitioner responds that the governing appeal deadline with respect to either decision is supplied by ORS 197.830(3), not ORS 197.830(9). Under ORS 197.830(3), a land use decision made without a hearing can, in some circumstances, be appealed to LUBA within 21 days of the date an adversely affected petitioner knew or should have known of the decision.[8] Petitioner argues

---

[8] ORS 197.830(3) provides, in relevant part:

> "If a local government makes a land use decision without providing a hearing, * * * a person adversely affected by the decision may appeal the decision to the [B]oard under this section:
>
> "(a) Within 21 days of actual notice where notice is required; or

that its appeal of the September 29, 2025 decision was filed within 21 days of the date it knew or could have known about the decision.

We tend to agree with petitioner that, if the challenged decisions were land use decisions, the applicable appeal deadline in this case would be supplied by ORS 197.830(3) rather than ORS 197.830(9). However, we need not resolve that question, because, as explained, the challenged decisions are not land use decisions as defined at ORS 197.015(10)(a), or "significant impact" land use decisions, and thus not subject to our jurisdiction, regardless of whether those decisions were timely appealed to LUBA.

MOTION TO TRANSFER

In the event that LUBA concludes that the challenged decisions are not land use decisions, petitioner moves to transfer these appeals to Multnomah County Circuit Court, pursuant to ORS 34.102 and OAR 661-010-0075(9) (Jan 15, 2025).[9] The city filed no response to the motion.

> "(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required."

[9] OAR 661-010-0075(9) (Jan 15, 2025) provides, in relevant part:

> "(a) Any party may request, pursuant to ORS 34.102, that an appeal be transferred to the circuit court of the county in which the appealed decision was made, in the event the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in 197.015(10) or (12).

The motion to transfer is granted.

DISPOSITION

The city's decisions are transferred.

"* * * * *

"(c) If the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015(10) or (12), the Board shall dismiss the appeal unless a motion to transfer to circuit court is filed as provided in subsection (9)(b) of this rule, in which case the Board shall transfer the appeal to the circuit court of the county in which the appealed decision was made."