

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

3
4 LANDON WEAVER,
5 *Petitioner,*

6
7 vs.

8
9 UNION COUNTY,
10 *Respondent.*

11
12 LUBA No. 2026-017

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from Union County.

18
19 Landon Weaver represented themselves.

20
21 Wyatt S. Baum represented respondent.

22
23 BASSHAM, Board Member; WILSON, Board MEMBER; ZAMUDIO,
24 Board Chair, participated in the decision.

25
26 DISMISSED 08/14/2026

27
28 You are entitled to judicial review of this Order. Judicial review is
29 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a March 10, 2026 email from the county public works director advising that driveway access for a certain property had been approved.

BACKGROUND

We take the following facts, which are not in dispute, from the parties' pleadings. In August 2022, the county denied a partition application for a property on Mt. Glen Road known as Tax Lot 300, concluding that the proposed driveway access location did not meet county sight distance requirements. On November 12, 2025, the county approved a different partition application for the same property and access location, subject to conditions. That same day, the county Public Works Department issued Road Approach and Construction Permit No. 25-1115 for the approved access location. On November 17, 2025, the applicant withdrew the partition application. Also on November 17, 2025, petitioner emailed the planning director to inquire about the effect of the applicant's withdrawal of the application. The planning director responded that because the application was withdrawn, the partition approval is "null and void." Petitioner's Memorandum on Jurisdiction 3. None of those decisions—the November 12, 2025 partition approval, the November 12, 2025 road approach permit, and the planning director's email—were appealed to LUBA.

1 On November 20, 2025, petitioner submitted to the county what he termed
2 an “Access Determination Request.”¹ On January 13, 2026, petitioner emailed
3 the county public works director the following:

4 “I wanted to follow up on the Access Determination request I
5 submitted on November 20, 2025. I have not yet received a written
6 determination or notice that no determination is required, and I
7 wanted to check on the current status of the request. Record 1.

8 On March 6, 2026, petitioner emailed the county public works director again:

9 “I wanted to follow up regarding the Access Determination request
10 I submitted on November 20, 2025 concerning access on Mt. Glen
11 Road for Tax Lot 300.

12 “With the 120-day period approaching on March 20, I wanted to
13 confirm whether a written determination has been issued or if it is
14 still pending.” Record 2.²

15 On March 10, 2026, the county public works director emailed petitioner the
16 following response:

17 “All access approvals have been presented and approved. The
18 county doesn’t use ‘Access Determination.’ Therefore, the access
19 has been granted and approved.” Record 2.

20 We understand from the parties’ pleadings that petitioner’s inquiries and
21 the county public works director’s March 10, 2026 email reference or concern

¹ Petitioner’s “Access Determination Request” is not in the record or in any of the parties’ pleadings.

² Although no party explains it, we presume the “120-day period” petitioner refers to in his email refers to ORS 215.427(1), which requires counties to take final action on certain applications within 120 days.

1 the earlier November 12, 2025 decision by the county Public Works Department
2 to issue Road Approach and Construction Permit No. 25-1115. That earlier
3 decision is not before us for review in this appeal. On March 13, 2026, petitioner
4 filed a notice of intent to appeal the March 10, 2026 email from the county public
5 works director to LUBA. That email is the subject of the present appeal.

6 On April 8, 2026, the county moved to dismiss this appeal. On April 13,
7 2026, petitioner filed an “Emergency Motion to Stay Construction Pending
8 Appeal,” asserting that the disputed driveway access was being constructed
9 pursuant to Road Approach and Construction Permit No. 25-1115, and requesting
10 that LUBA immediately stay all construction activities associated with that
11 permit. The county’s motion to dismiss argued that the appeal was untimely filed
12 because the road approach permit was issued and became final on November 12,
13 2025 and the appeal was filed more than 21 days after that date, and further that
14 the permit was not a “land use decision” under ORS 197.015(10)(a) because it
15 did not concern the application of any land use regulations or comprehensive plan
16 provisions.

17 On April 20, 2026, we issued an order that denied petitioner’s motion for
18 stay on the basis that we had no authority to stay Road Approach and
19 Construction Permit No. 25-1115, because it is not the decision challenged in this
20 appeal, and denied the county’s motion to dismiss, because it presented no
21 argument regarding the timely appeal of, or our jurisdiction over, the decision
22 challenged in this appeal—the March 10, 2026 email. *Weaver v. Union County*,

1 LUBA No 2026-017 (Apr 20, 2026). At that time, we had not yet been provided
2 a copy of the March 10, 2026 email.

3 On May 11, 2026, LUBA received the record, which included the March
4 10, 2026 email. Subsequently, petitioner filed record objections and the county
5 filed a response to the record objections. The county did not renew its motion to
6 dismiss as to LUBA's jurisdiction over the March 10, 2026 email. On July 2,
7 2026, we issued an order raising the issue of jurisdiction on our own motion and
8 requested additional briefing from the parties regarding the basis for our
9 jurisdiction over this appeal. *Adams v. City of Ashland*, 33 Or LUBA 552, 554
10 (1997).

11 On July 14, 2026 and July 22, 2026, respectively, petitioner and the county
12 filed their memoranda on jurisdiction. For the reasons explained below, we
13 dismiss the appeal. The record objections are denied as moot.

14 **JURISDICTION**

15 Petitioner argues that LUBA has jurisdiction because the March 10, 2026
16 email is a statutory "land use decision" under ORS 197.015(10)(a). Alternatively,
17 petitioner argues that LUBA has jurisdiction because the March 10, 2026 email
18 is a "significant impacts" land use decision. *City of Pendleton v. Kerns*, 294 Or
19 126, 653 P2d 992 (1982) (*Kerns*).

20 The county argues that the March 10, 2026 email is neither a statutory land
21 use decision nor a significant impacts land use decision.

22 The March 10, 2026 email in its entirety reads:

1 “All access approvals have been presented and approved. The
2 county doesn’t use ‘Access Determination.’ Therefore, the access
3 has been granted and approved.” Record 2.

4 **A. The email is not a statutory land use decision.**

5 As relevant here, ORS 197.825(1) limits LUBA’s jurisdiction to review of
6 “land use decisions,” as defined at ORS 197.015(10)(a). Under that definition, a
7 “land use decision” includes a “final decision or determination made by a local
8 government or special district that concerns the adoption, amendment or
9 application of[.]” among other things, “a land use regulation[.]” ORS
10 197.015(10)(a)(A)(iii). In turn, ORS 197.015(11) defines “land use regulation”
11 to mean “any local government zoning ordinance * * * or similar general
12 ordinance establishing standards for implementing a comprehensive plan.” The
13 county’s land use regulations are codified in the Union County Zoning, Partition,
14 and Subdivision Ordinance (UCZPSO).

15 Petitioner argues that the March 10, 2026 email is a statutory “land use
16 decision” under ORS 197.015(10) because it “reflects the County’s exercise of
17 judgment applying [UCZPSO] Article 25 Land Division Regulations to that still-
18 disputed access location—inconsistent with the County’s own prior position.”
19 Petitioner’s Memorandum on Jurisdiction 6.

20 The county argues that the March 10, 2026 email is not a statutory land
21 use decision because the county public works director did not apply, and was not
22 required to apply, any comprehensive plan provision or any land use regulation
23 under the UCZPSO, in replying to petitioner’s email.

1 As the party seeking LUBA review, the burden is on petitioner to establish
2 that the appealed decision is a land use decision. *Miller v. City of Dayton*, 22 Or
3 LUBA 661, 665 (1992); *Billington v. Polk County*, 299 Or 471, 475, 703 P2d 232
4 (1985). Here, petitioner must, at a minimum, identify at least one regulation in
5 UCZPSO Article 25 that the county public works director applied, or should have
6 applied, in his March 10, 2026 email determining that access had been approved.
7 Both petitioner and the county acknowledge that the county applied sight-
8 distance standards in UCZPSO 25.05 in the 2022 partition denial and in the 2025
9 partition approval. Those prior decisions are not before us. Petitioner argues that
10 because the 2025 partition application was withdrawn and the planning director
11 emailed petitioner stating that the 2025 partition approval was “null and void,”
12 the public works director’s subsequent March 10, 2026 email determining that
13 access for the subject property had been approved was inconsistent with the
14 planning director’s determination. Petitioner argues that “[r]econciling those
15 positions required the County to exercise judgment concerning the continuing
16 legal effect of [the 2025 partition decision’s] findings after the approval
17 producing them had been declared void.” Petitioner’s Memorandum on
18 Jurisdiction 5.

19 The county argues that the email does not exercise any judgment
20 concerning the effect of the 2025 partition decision; it is merely a confirmation
21 that the road approach permit authorizes the subject access, and does not cite,
22 interpret, or apply any provision of the UCZPSO. We agree with the county.

1 The March 10, 2026 email does not itself make a determination under any
2 provision of the UCZPSO or otherwise appear to concern the application of a
3 land use regulation. The email simply states the public works director's
4 understanding that access had already been approved, presumably in Road
5 Approach and Construction Permit No. 25-1115. Although petitioner contends
6 that reaching that conclusion necessarily required the county to resolve the legal
7 effect of the planning director's earlier statement that the 2025 partition approval
8 was "null and void," nothing in the March 10, 2026 email indicates that the public
9 works director undertook that analysis, interpreted any provision of the
10 UCZPSO, or exercised discretion under the county's land use regulations. Rather,
11 the email reflects the director's understanding of the status of a previously
12 approved road approach permit. Whether that understanding is legally correct is
13 beside the point for jurisdictional purposes. LUBA's jurisdiction depends on
14 whether the challenged email itself constitutes a final determination concerning
15 the application of a comprehensive plan provision or land use regulation, not
16 whether it may be inconsistent with an earlier land use decision or may rest on
17 an incorrect legal premise. Because petitioner has not identified any provision of
18 the UCZPSO that the public works director applied or was required to apply in
19 the March 10, 2026 email, petitioner has not met its burden to establish that the
20 email is a statutory land use decision.

1 **B. The email is not a significant impacts land use decision.**

2 A “significant impacts” land use decision is a decision that does not qualify
3 under the definition of “land use decision” at ORS 197.015(10)(a)(A) but,
4 nonetheless, is deemed to be reviewable as a land use decision if, among other
5 things, it creates “an actual, qualitatively or quantitatively significant impact on
6 present or future land uses.” *Carlson v. City of Dunes City*, 28 Or LUBA 411,
7 414 (1994). *See also Marks v. LCDC*, 327 Or App 708, 727-32, 536 P3d 995
8 (2023) (summarizing case law under the significant impacts test). In *Kerns*, the
9 Oregon Supreme Court recognized that

10 “‘significant impact on present or future land uses’ is a nebulous
11 standard, particularly in the context of a city’s decision to undertake
12 street improvement work. Whereas some decisions, such as to
13 resurface a street or repair a pothole, have only a *de minimis* impact
14 on land use, and some, such as to construct a major arterial road or
15 a bridge, have a substantial impact, a large number of a city’s day-
16 to-day decisions regarding public works and roads fall in between.”
17 294 Or at 133.

18 In *Northwest Trail Alliance v. City of Portland*, we explained our view of
19 the limited circumstances under which LUBA should exercise its review
20 jurisdiction under the judicially created significant impacts test:

21 “In the very rare cases when the significant impacts test is deemed
22 met, LUBA’s review is typically conducted under statutes or other
23 laws, such as road vacation statutes, that provide standards for the
24 decision, and that have some direct bearing on the use of land.
25 *Billington*, for example, involved a road vacation decision under the
26 then-applicable statutes, which included standards requiring the
27 county to consider the impacts on access for nearby property
28 owners, and whether the vacation is in the ‘public interest.’ *See also*

1 *Mekkers v. Yamhill County*, 38 Or LUBA 928, 931 (2000) (road
2 vacation that would set ‘the stage for further development that will
3 alter the character of the surrounding land uses’); *Harding v.*
4 *Clackamas County*, 16 Or LUBA 224, 228 (1987), *aff’d*, 89 Or App
5 385, 750 P2d 167 (1988) (vacation of road that would alter traffic
6 pattern of nearby properties).

7 “In our view, LUBA should exercise review jurisdiction over a
8 decision under the significant impacts test only if the petitioner
9 identifies the non-land-use standards that the petitioner believes
10 apply to the decision and would govern LUBA’s review. Further,
11 we believe that those identified non-land-use standards must have
12 *some* bearing or relationship to the use of land.” 71 Or LUBA 339,
13 346 (2015) (emphasis in original).

14 Petitioner argues that LUBA has jurisdiction because the March 10, 2026
15 email is a “significant impacts” land use decision because “it resolves, for
16 practical purposes, whether Tax Lot 300 can be lawfully developed at all, at a
17 location with a documented history of safety and sight-distance deficiencies.”
18 Petitioner’s Memorandum on Jurisdiction 7. However, petitioner has not
19 established that the March 10, 2026 email, in recognizing that the access permit
20 had already been approved, has any impact on the developability of Tax Lot 300,
21 or otherwise has an actual, qualitatively or quantitatively significant impact on
22 present or future land uses. Even assuming that Road Approach and Construction
23 Permit No. 25-1115 might have an impact on the developability of Tax Lot 300—
24 which petitioner has not established—the impact of that access permit cannot be
25 attributed to or challenged in this appeal of the March 10, 2026 email. In addition,
26 petitioner identifies no non-land-use standards that petitioner believes apply to
27 the March 10, 2026 email and would govern LUBA’s review in this appeal.

1 Accordingly, petitioner has failed to establish that the challenged decision is a
2 significant impacts land use decision subject to our jurisdiction.

3 This appeal is dismissed.

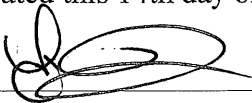
Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2026-017 on August 14, 2026, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Landon Weaver
63608 Mt Glen Rd
La Grande, OR 97850

Wyatt S. Baum
Baum Smith LLC
808 Adams Avenue
La Grande, OR 97850

Dated this 14th day of August, 2026.



Erin Pence
Executive Assistant

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