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

SILETZ RESORTS, LLC,
Petitioner,

vs.

LINCOLN COUNTY,
Respondent.

LUBA No. 2026-006

FINAL OPINION
AND ORDER

Appeal from Lincoln County.

Alan M. Sorem filed the petition for review and reply brief and argued on behalf of petitioner. Also on the brief was Saalfeld Griggs PC.

Douglas R. Holbrook filed the respondent's brief and argued on behalf of respondent.

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

REMANDED 10/21/2026

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

Opinion by Zamudio.

NATURE OF THE DECISION

Petitioner appeals a letter from an assistant county counsel concluding that conditional use permits (CUPs) for a recreational vehicle (RV) park had expired.

SUPPLEMENTAL RECORD AND MOTION TO TAKE EVIDENCE

On May 5, 2026, we issued an order denying the county's motion to dismiss, and sustaining petitioner's record objections. In sustaining petitioner's record objections, we explained that

> "the record must include correspondence between petitioner's prior and current counsel and county counsel, and any documents that petitioner or county staff 'placed before' the county counsel during the time that county counsel considered whether the CUPs had expired, which appears to us to include the period between August 28, 2025, and December 30, 2025." *Siletz Resorts, LLC v. Lincoln County*, LUBA No 2026-006 (May 5, 2026) (order at 9) (quoting OAR 661-010-0025(1)(b)).[1]

We further instructed:

> "That documentation should include any evidence, including permits, that was placed before the county counsel to determine whether the approved conditional uses were 'initiated' or 'established' including but not limited to on-site sewage disposal construction permits, building permits, access permits, other

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[1] OAR 661-010-0025(1)(b) provides that the record shall include

> "[a]ll written testimony and all exhibits, maps, documents or other materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker."

approvals, and other evidence demonstrating whether the authorized conditional uses had been established." *Id.* at 9-10 (quoting Lincoln County Code (LCC) 1.1620(1) (1994)).

On May 21, 2026, LUBA received an amended record from the county. On June 1, 2026, petitioner filed objections to the amended record objecting, generally, that the amended record is incomplete in that it does not contain permit approvals that petitioner alleged must exist and would, presumably, demonstrate that the approved conditional uses were "initiated" or "established" for purposes of LCC 1.1620(1) (1994). Petitioner did not identify any specific documents that petitioner contended were improperly omitted from the amended record. The county responded that the county possessed no additional documentation. On July 28, 2026, we issued an order denying petitioner's objections to the amended record and settled the record. Due to the absence of any specified improperly omitted documents, we deferred to the county's representation that no other documents were in the county's possession and omitted from the amended record.

On August 18, 2026, petitioner filed the petition for review and a motion to take evidence not in the record. Petitioner attached to that motion documents identified as a supplemental record and the parties refer to those documents as the supplemental record in their briefs. Petitioner's supplemental record includes:

(1) A September 19, 2025 letter from petitioner's counsel to county counsel;

(2) A November 21, 2025 letter from petitioner's counsel to county counsel;

(3) An October 16, 2025 email from a county planning technician to petitioner's counsel;

(4) A June 20, 2000 letter from the Oregon Department of Transportation (ODOT) to David and Kathleen Feyk (who we assume were the RV park's prior owners); and

(5) Excerpted pages from county case file 17-PC-C-98 (the 1998 Clubhouse CUP described below).

OAR 661-010-0045(1) provides:

"Grounds for Motion to Take Evidence Not in the Record: The Board may, upon written motion, take evidence not in the record in the case of disputed factual allegations in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or 227.178, or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. The Board may also upon motion or at its discretion take evidence to resolve disputes regarding the content of the record, requests for stays, attorney fees, or actual damages under ORS 197.845."

Petitioner's motion to take evidence concerns a dispute regarding the content of the record. Petitioner argues that the record omits documents that were placed before and not rejected by the county counsel prior to the county counsel issuing the challenged decision. Petitioner did not previously specify in petitioner's record objections the documents in petitioner's supplemental record.

The county responds and does not object to the 2025 correspondence being included in the supplemental record, but argues that the other documents "are not germane to the alleged decision." Respondent's Response to Motion to Take Evidence Not in the Record 1. The county does not dispute that all of the

documents petitioner seeks to have included in the supplemental record were placed before the county counsel before the county counsel issued the challenged decision. We agree with petitioner that the documents were placed before the county counsel during the time that the county counsel considered whether the CUPs had expired, are subject to our order on record objections, are properly part of the record, and were improperly omitted from the amended record. Accordingly, we agree with petitioner that all the documents in petitioner's supplemental record are part of the record. We will treat petitioner's motion to take evidence as a motion to supplement the record and we accept the materials attached to petitioner's motion as the supplemental record in this appeal. To be clear, those documents are in the record and are not evidence outside the record. Petitioner's motion is granted.

FACTS

We reiterate the facts as set out in our order denying the county's motion to dismiss. Petitioner operates Chinook Bend RV Resort, a recreational vehicle park in operation since 1963. Petitioner purchased the subject property in 2006. In July 1998, the county approved a CUP for a clubhouse building on the subject property. In September 1999, the county approved a CUP allowing the park to be expanded from 67 spaces to 83 spaces. The concluding paragraph in the 1999 expansion CUP states: "This approval shall be void after two (2) years unless substantial construction pursuant thereto has taken place, as defined in Chapter 1.1620 of the Lincoln County Land Use Code." Record 26 (boldface omitted).

The 1999 expansion CUP was intended to legitimize an expansion previously undertaken pursuant to an expansion CUP approved in 1991. Those three CUPs are referred to herein as the CUPs. Since acquiring the property in 2006, petitioner has used the clubhouse building and 83 spaces for the RV park.

In the summer of 2025, the county cited petitioner for violations of Oregon Health Authority administrative rules governing operation and maintenance of RV parks, including a rule that requires documentation of county land use approval for more than 67 spaces. In response, petitioner requested, and the county provided documentation including applications filed by the previous RV park owner. Petitioner communicated to the county their position that the conditional uses were authorized. On August 27, 2025, petitioner's former counsel sent a letter to the county development director stating that the subject property had passed numerous inspections and requesting the county file on the subject property. On August 28, 2025, the county counsel responded with instructions on how to file a public records request.

On December 30, 2025, the county counsel sent petitioner's counsel a letter via email stating that the CUPs had expired because petitioner (or the former RV park owner) did not document compliance with the conditions of approval in the CUPs, including obtaining an access permit, area development permit, and electrical and septic approvals. On January 12, 2026, petitioner requested clarification whether the county counsel intended the December 30, 2025, letter to be a final land use decision on the validity of the CUPs, and

requested that the county identify any applicable local appeal avenues or other relevant procedures. On January 20, 2025, petitioner filed their notice of intent to appeal in this appeal.

The county moved to dismiss the appeal, arguing that the county counsel's letter is not a land use decision as defined in ORS 197.015(10)(a)(A). We denied the motion to dismiss after agreeing with petitioner that the disputed letter is not merely an interpretation of conditions of approval in the CUPs but was the county counsel's determination that the CUPs had expired and were not effective in 2025. The decision interprets and applies a land use regulation, LCC 1.1620(1) (1994), which provided:

> "Approval of a conditional use shall be void two years after the effective date of the decision if the authorized development action is not initiated in that period. As used in the subsection, 'initiated' means that on-site sewage disposal construction permits, building permits or other necessary approvals have been secured and exercised or maintained valid or, if no such approvals are required, that the authorized use has been established."

Petitioner argued to the county that adequate permitting and construction had occurred to prevent the CUPs from becoming void under LCC 1.1620(1) (1994). That is, under the language of LCC 1.1620(1) (1994), "necessary approvals ha[d] been secured and exercised or maintained valid or, if no such approvals [were] required, that the authorized use ha[d] been established." The challenged county counsel letter refers to an access permit, area development permit, and electrical

or septic approvals.[2] Petitioner argued, and we agreed, that this appeal concerns disputed facts and interpretation of LCC 1.1620(1) (1994).

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the county committed procedural error by making a decision that the CUPs have expired without following the decision process set out in LCC 1.1210 (Review Procedures) and 1.1240 (Findings). LCC 1.1210 governs the county's review of land use applications and provides for notice, hearings (in some cases), written notification of a decision, and local appeals. LCC 1.1240 requires the county decision maker to make written findings justifying the decision. Petitioner further argues that, in their correspondence with the county, petitioner asserted a vested right and the county was required to process a vested right determination as a permit decision under ORS 215.416. For the reasons explained below, we agree with petitioner that the county must

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[2] The challenged county counsel letter states:

> "Specifically, the county has no record of the ODOT access permit, the area development permit, electrical or septic approvals required by the conditional use permit. I understand you have received copies of the County's land use permit case files, which customarily include those documents submitted to the Planning Division by permittees demonstrating conformance with time-sensitive conditions of approval. Lincoln County Planning Division staff has reviewed all relevant records on this matter and found no evidence that the permittee (former owner) at the time had submitted, or made any attempt to submit, documentation demonstrating conformance with [the 1991 CUP]." Record 1.

provide petitioner a local process under LCC 1.1210 and 1.1240 regarding the validity of the CUPs. However, we disagree that the challenged decision includes or was required to include a vested right determination and the county did not err in responding to petitioner's communications without making a vested right determination.

Petitioner cites *Gillette v. Lincoln County*, 79 Or LUBA 549 (2019), as analogous and instructive. We agree that decision is instructive. In *Gillette*, the petitioners appealed a planning director's decision determining that (1) a 1990 farm dwelling approval (1990 Approval) was no longer valid and (2) the petitioners did not have a vested right to construct a dwelling.

In that case, the petitioners had placed the subject property for sale, advertising that the property included land use approval for a farm dwelling. The county advised prospective buyers that the 1990 Approval had expired. The petitioners' attorney sent the county a letter asking for a written determination (1) that the 1990 Approval had not expired and was still valid or (2) that the petitioners' development of a driveway, septic system, and well in 1994 were sufficient to establish a vested right to construct a dwelling under *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973) (*Holmes*). The county planning director responded with a memorandum concluding that the 1990 Approval was no longer valid and that the 1994 development activities were insufficient to establish a vested right to construct a dwelling under *Holmes*.

The petitioners appealed to LUBA. The county did not dispute that the challenged memorandum was a land use decision subject to LUBA's jurisdiction. The petitioners raised procedural, legal, findings, and evidentiary challenges to the county's decision that the 1990 Approval had expired and that the petitioners had no vested right to construct a dwelling based on *Holmes*.

The county responded that, because the petitioners had not filed any land use application, the planning director properly issued the challenged memorandum under an informal decision-making process that did not provide for a local appeal. We rejected that argument and reasoned that because the county had accepted, processed, and resolved the petitioners' two claims, "the county no longer has the option of refusing to consider those claims unless and until petitioners submit a formal land use application." *Gillette*, 79 Or LUBA at 558. We ultimately agreed with the petitioners that the county should have processed their request for a determination regarding the validity of the 1990 Approval under procedures that provide for notice, an evidentiary hearing, and a right of local appeal. *Id.* We observed that "[t]he permit validity and vested rights issues are distinct and alternative issues." *Id.* at 552. We opined that the county should first resolve the issue of whether the 1990 Approval was still valid before addressing and deciding the petitioners' alternative vested rights claim. We did not address the petitioners' findings and evidence challenges because the county would be required to adopt a new decision on remand, based on a different record and findings.

Petitioner asserts that this case is like *Gillette* because the county decided in the challenged letter (1) whether the prior permits are valid and (2) whether existing improvements established a vested right. Petition for Review 7-8. Like in *Gillette*, the county issued those determinations in an informal communication.

A. CUP Validity and LCC 1.1210 and 1.1240

The county responds that the procedures for a land use application in LCC 1.1210 and 1.1240 are not implicated because petitioner did not submit an application or an "unequivocal request" that the county determine the CUP validity or vested rights. Respondent's Brief 8. We agree with petitioner that this case falls squarely within our prior reasoning and ruling in *Gillette* as to CUP validity. The county potentially could have directed petitioner to file a land use application to resolve the validity of the CUPs. However, once the county issues a decision on the validity of the CUPs, the county cannot defend its decision based on the fact that petitioner did not submit a formal land use application. Once the county undertook to decide the validity of the CUPs, the county was required to provide petitioner the process required by LCC 1.1210 and 1.1240, including an evidentiary hearing, written findings, and a right of local appeal.

B. Vested Rights

However, unlike in *Gillette*, the county did not make a vested rights determination and therefore was not required to process petitioner's request as a permit under ORS 215.416. Petitioner points to Supplemental Record pages 3 to 4 as containing petitioner's request for a vested rights determination, and cites

Record 1 as the county's vested rights decision. Supplemental Record pages 3 to 4 is a November 21, 2025 letter from petitioner's attorney to the county counsel and provides, in pertinent part:

> "Expiration of Previously Issued Conditional Use Permits
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> "I have reviewed relevant documents provided by County staff on October 16, 2025. Conditional Use Permit application no. 17-PC-C-98 for a clubhouse building was approved in July of 1998 (the '1998 Clubhouse CUP'), as well as Conditional Use Permit application no. 25-Adm-C-99 to expand the existing recreational park on August 18, 1999, (the '1999 Expansion CUP'). Both approvals were subject to conditions of approval. It is our understanding that substantial construction, *as defined by the then applicable code*, took place within 2 years of approval and was completed without any prior notice of termination by the County. This belief is based on both the County's subsequent permitting and inspection actions, and the facts described in those applications. The County approved facilities for shower, bathroom, and septic expansion. The County's past approvals demonstrate that the County shared this interpretation that they were valid in the years immediately following the approvals and during the years of subsequent inspections. Moreover, as noted in the correlated Staff Report, the previous owner filed the 1999 Expansion CUP to legitimize the already constructed expansion from sixty-seven (67) spaces to eighty-three (83). Because these spaces were in existence at the time the 1999 Expansion CUP was issued, substantial construction occurred concurrent with the approvals. Regarding the camp store, under its own Conditional Use Permit, construction and permitting were completed. Again, it is our understanding that neither Conditional Use Permit was revoked or terminated. Such decisions were therefore vested and did not expire.
>
> "Based on discussions with my client, various improvements were made starting in 2006 when he purchased the Subject Property. As I understand it, he did so at the request of the County and received all requisite permits and inspections from the County. In addition, the County has conducted annual inspections of the property since

> at least 2006. It was not until 2022 that the County indicated that there were any issues with any land use entitlements.
>
> "The County has only provided various land use documents concerning the applications filed by the previous owner. I would like clarity as to what records, if any, demonstrate that the 1998 Clubhouse CUP and the 1999 Expansion CUP'S conditions of approval were not satisfied to then revoke or terminate the permit. If there are no other documents relevant to this issue, the County must conclude the approvals did not expire for the lack of substantial construction within the requisite two-year period." (Boldface omitted; emphasis added.)

Petitioner asserts that this letter requested a vested rights determination. We briefly summarize vested rights as context for our disposition of this argument. Nonconforming uses and vested rights concern the intersection between government land use regulation and private property rights. Nonconforming uses are uses of land that are allowed to continue despite the fact they violate land use ordinances because they "'lawfully existed prior to the enactment of the ordinance.'" *Rogue Advocates v. Board of Comm. of Jackson County*, 277 Or App 651, 654, 372 P3d 587 (2016), *rev dismissed*, 362 Or 269 (2017) (quoting *Eagle Creek Rock Prod. v. Clackamas Co.*, 27 Or App 371, 374, 556 P2d 150 (1976), *overruled on other grounds by Forman v. Clatsop County*, 63 Or App 617, 665 P2d 365 (1983), *aff'd*, 297 Or 129 (1984)). A common-law vested right to develop is an equitable claim to an inchoate nonconforming use that requires showing a current vested right to develop at the time that the claim is made. *Oregon Shores v. Board of County Commissioners*, 297 Or App 269, 275-76, 279, 441 P3d 647 (2019); *Holmes*, 265 Or at 197. Vested rights and

nonconforming uses are legally distinct concepts; however, they are considered "inextricably related." *Fountain Village Development Co. v. Multnomah Cty.*, 176 Or App 213, 223, 31 P3d 458 (2001), *rev den*, 334 Or 411 (2002); *see also Wal-Mart Stores, Inc. v. City of Hood River*, 72 Or LUBA 1, 11, *aff'd*, 274 Or App 261, 363 P3d 522 (2015) ("vested rights are essentially a species of nonconforming use"). The factors considered in determining whether there are vested rights are:

> (1) The good faith of the property owner in making expenditures to lawfully develop their property in a given manner;
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> (2) The amount of notice of any proposed re-zoning;
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> (3) The amount of reliance on the prior zoning classification in purchasing the property and making expenditures to develop the property;
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> (4) The extent to which the expenditures relate more to the nonconforming use than to the conforming uses;
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> (5) The extent of the nonconformity of the proposed use as compared to the uses allowed in the subsequent zoning ordinances;
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> (6) Whether the expenditures made prior to the subsequent zoning regulation show that the property owner has gone beyond mere contemplated use and has committed the property to an actual use which would in fact have been made but for the passage of the new zoning regulation; and
>
> (7) The ratio of the prior expenditures to the total cost of the proposed use.

Kipp v. City of Astoria, LUBA No 2024-012 (Dec 11, 2024), *aff'd*, 339 Or App 298, 566 P3d 721 (2025) (slip op at 22-23). A property owner that establishes a

vested right may complete the development and use their property for a nonconforming use, subject to the restrictions on nonconforming uses. *Polk County v. Martin*, 292 Or 69, 80-82, 636 P2d 952 (1981).

In *Gillette*, the vested rights issue arose because of intervening changes in the applicable law regulating dwellings on farmland. The parties disputed the validity of the 1990 Approval. The parties appeared to agree that the subject property could not qualify for a farm dwelling under the amended applicable law. Differently, here, petitioner asserts a present right to continue a previously approved conditional use, under the terms of one or more CUPs. The county has taken the position that the prior CUPs have expired. However, no party argues that petitioner's use of the property has been prohibited by intervening changes in land use law. Accordingly, the facts and legal positions asserted by petitioner do not seem to sound in vested rights.

Petitioner's attorney's November 21, 2025 letter referred to "vesting" and "substantial construction" in the context of development under the CUPs, in order to avoid the CUPs becoming void. Again, the concluding paragraph in the 1999 expansion CUP states: "This approval shall be void after two (2) years unless *substantial construction* pursuant thereto has taken place, *as defined in Chapter 1.1620* * * *." Record 26 (boldface omitted; emphases added). Petitioner's letter did not raise or request a vested rights determination.

Similarly, in the challenged decision, the county counsel concluded that the CUPs are void and did not decide any vested right issue. The decision states:

> "I am writing in partial response to your correspondence and recent events including attempting to obtain a license for the facility.
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> "The last conditional use application, which you dwell on in your letter, was actually the second filing by the former owners of the Chinook Bend RV park. The previous permit approval for the same proposed use, which was permit 20-ADM-C-91, expired because the applicant failed to provide any documentation that they met the conditions of approval and the tentative conditional use permit approval, expired. This is precisely what occurred with the second conditional use application – no documents establishing compliance with the conditions were submitted within the 2-year time frame, and thus, the tentative approval expired.
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> "Given this situation, there are only 67 RV spaces allowed in the park area as previously approved. No use of the AC property for the park is approved." Record 1.

We reject petitioner's assertion that petitioner requested a vested rights determination or that the county made, or was required to make, a vested rights determination in the challenged decision.[3] Accordingly, we remand only with respect to the CUP validity issue. On remand, the county must decide the CUP validity issue following the decision process set out in LCC 1.1210 (Review Procedures) and 1.1240 (Findings).

C. Waiver or Concession of CUP Limitation or Expiration

The county asserts that petitioner was aware of the county's position that the CUPs were no longer valid since as early as September 2015 and petitioner has either conceded that point or waived an appeal of the county's decision. The

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[3] Nothing in this decision precludes petitioner from requesting a common law vested rights determination from the county.

county points to a county land use complaint form dated September 25, 2015, which states:

> "Complaint Description: Chinook Bend RV Park has about 81 septic connections and has approval from LC Planning for 67 RV spaces with septic connections. Additionally, there are about 20 camping spaces and 8 RV spaces with water and electricity only. Please see attached information. The park is being sold and the owner would like to resolve these issues before the park is sold. He is holding up escrow." Record 7.

There is no information in the record whether that 2015 land use complaint resulted in a final, appealable county code enforcement order. The land use complaint is not a final decision determining the legality and extent of petitioner's RV park land use, and it is not a particularly relevant or adequate response to petitioner's assertion that the county failed to provide petitioner the required process before determining that the CUPs are not valid.

The county also contends that an August 27, 2025 letter from petitioner's prior attorney to the county demonstrates that petitioner was aware of the county's position that the 1999 CUP was invalid. Respondent's Brief 2-3. The county quotes and emphasizes that, in that letter, petitioner's attorney wrote that "[t]he [RV] Park has long acknowledged the existence of 67 spaces under the [CUP]." *Id.* (quoting Record 5). The county argues that petitioner thereby acknowledged invalidity of the 1999 CUP. However, the county does not describe or respond to the remainder of that same letter, in which petitioner's prior attorney asserted that tent spaces "have consistently been recognized as

grandfathered in" and that cabins on the property are "moveable and have similarly been approved through repeated inspections." Record 5. Petitioner's prior attorney also described investments and improvements on the property and asserted that petitioner "has consistently complied with County requirements and in many respects, exceeded them." Record 6. We reject the county's characterization of this letter as a concession that the 1999 CUP is invalid.

Petitioner's first assignment of error is sustained, in part, and denied, in part.

SECOND ASSIGNMENT OF ERROR

In the second assignment of error, petitioner argues, variously, that the county misconstrued the CUP conditions of approval, misconstrued LCC 1.1620 (1994), improperly construed the elements of common law vesting, failed to adopt adequate findings, and made findings not supported by substantial evidence. We sustain part of the first assignment of error, which requires the county to provide petitioner a hearing, a written decision, and an opportunity for a local appeal. Thus, the county will be required to adopt a new decision on remand, likely based on a different record and findings. Thus, we need not and do not address the second assignment of error.

The county's decision is remanded.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2026-006 on October 21, 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:

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Dated this 21st day of October, 2026.

Erin Pence
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