

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

3
4 KELLY BARTHOLOMEW,
5 *Petitioner,*

6
7 vs.

8
9 CLACKAMAS COUNTY,
10 *Respondent,*

11
12 and

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14 PORTLAND GENERAL ELECTRIC COMPANY,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2025-073

18
19 SAVE STAFFORD ROAD,
20 *Petitioner,*

21
22 vs.

23
24 CLACKAMAS COUNTY,
25 *Respondent,*

26
27 and

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29 PORTLAND GENERAL ELECTRIC COMPANY,
30 *Intervenor-Respondent.*

31
32 LUBA No. 2025-074

33
34 ORDER

35 Petitioners appeal a hearings officer decision approving a conditional use
36 permit (CUP) for an electrical transmission line along Stafford Road.

1 **MOTION FOR STAY**

2 On January 5, 2026, LUBA received petitioner Bartholomew’s petition for
3 review. On January 26, 2026, LUBA received the response briefs in these appeals
4 and Bartholomew’s motion for a stay of the challenged decision pending final
5 resolution in these appeals. On January 30, 2026, LUBA received Bartholomew’s
6 motion for expedited consideration of the motion for stay. On February 6, 2026,
7 LUBA received intervenor-respondent Portland General Electric’s (PGE’s)
8 response opposing the motion for stay. On February 19, 2026, LUBA received
9 Bartholomew’s motion for leave to file a limited surreply in support of the motion
10 for stay. We allow the surreply and we deny the motion for stay for the reasons
11 explained below.

12 LUBA has statutory authority to grant a stay of a challenged land use
13 decision or limited land use decision during the pendency of the LUBA appeal,
14 if LUBA determines in its discretion that the requirements for a stay are satisfied.
15 ORS 197.845(1).¹ The movant has the burden to satisfy the requirements for a

¹ ORS 197.845(1) provides:

“Upon application of the petitioner, the board may grant a stay of a land use decision or limited land use decision under review if the petitioner demonstrates:

“(a) A colorable claim of error in the land use decision or limited land use decision under review; and

“(b) That the petitioner will suffer irreparable injury if the stay is not granted.”

1 stay. ORS 197.845(1) and OAR 661-010-0068 govern motions for stay and
2 require the movant to demonstrate (1) a colorable claim of error in the decision
3 under review, and (2) that the movant will suffer irreparable injury if the stay is
4 not granted. A stay is “an extraordinary remedy that will only be granted on clear
5 and convincing proof that the alleged irreparable injury is in fact real or there is
6 a high probability it will take place.” *McGreer v. City of Rajneeshpuram*, 7 Or
7 LUBA 415, 417 (1983).

8 **A. Incomplete Motion for Stay**

9 PGE responds, initially, that the motion for stay does not contain the
10 information required by OAR 661-010-0068(1), and should be denied on that
11 basis. OAR 661-010-0068(1) provides:

12 “A motion for a stay of a land use decision or limited land use
13 decision shall include:

14 “(a) A statement setting forth movant’s right to standing to appeal
15 the decision;

16 “(b) A statement explaining why the challenged decision is subject
17 to the Board’s jurisdiction;

18 “(c) A statement of facts and reasons for issuing a stay,
19 demonstrating a colorable claim of error in the decision and
20 specifying how the movant will suffer irreparable injury if a
21 stay is not granted;

22 “(d) A suggested expedited briefing schedule;

23 “(e) A copy of the decision under review and copies of all
24 ordinances, resolutions, plans or other documents necessary
25 to show the standards applicable to the decision under
26 review.”

1 We agree with PGE that the motion for stay does not contain all of the
2 elements required by OAR 661-010-0068(1). The motion does not include a
3 statement of Bartholomew’s standing to appeal the decision, a statement
4 explaining why the challenged decision is subject to the Board’s jurisdiction, a
5 suggested expedited briefing schedule, or a copy of the decision under review.
6 However, Bartholomew filed the motion for stay after filing their petition for
7 review, which contains standing and jurisdictional statements and a copy of the
8 challenged decision. PGE does not challenge Bartholomew’s standing or our
9 jurisdiction. We consider the deficiencies in the motion for stay technical
10 violations that do not impede our review and resolution of the motion. OAR 661-
11 010-0005.

12 **B. Colorable Claim of Error**

13 The requirement to demonstrate a colorable claim of error is not
14 particularly demanding. *Rhodewalt v. Linn County*, 16 Or LUBA 1001, 1004
15 (1987). A petitioner need not establish that it will prevail on the merits. *Thurston*
16 *Hills Neigh. Assoc. v. City of Springfield*, 19 Or LUBA 591, 592 (1990). Provided
17 a petitioner’s arguments are not devoid of legal merit, it is sufficient that the
18 errors alleged, if sustained, would result in reversal or remand of the challenged
19 decision. *Barr v. City of Portland*, 20 Or LUBA 511, 513 (1990).

20 Bartholomew alleges, among other things, that the county erred in failing
21 to apply applicable comprehensive plan policies and development standards in
22 the county’s Zoning and Development Ordinance (ZDO) section 1000 and

1 Stafford Urban Reserve Intergovernmental Agreements (IGAs). PGE concedes
2 that those alleged errors, if sustained, would result in remand. PGE Response to
3 Motion for Stay 8. However, PGE argues that those arguments do not present
4 colorable claims of error and are “devoid of legal merit” because the argument
5 that the hearings officer erred in failing to apply ZDO section 1000 is based on
6 case law that does not exist and fails to address the codified definition of “utility
7 line” in ZDO 202. PGE also points out that the argument that the hearings officer
8 erred in failing to apply the IGAs is also based on case law that does not exist
9 and on an inapplicable statute.

10 We agree with PGE that petitioner’s reliance on fabricated case citations
11 and failure to address relevant code provisions greatly undermines the merits of
12 petitioner’s claims of error. However, the standard for colorable claim of error is
13 that the asserted error, *if sustained*, would result in remand or reversal.
14 Bartholomew has cleared that low bar and demonstrated a colorable claim of
15 error. ORS 197.845(1)(a).

16 **B. Irreparable Injury**

17 “[T]he cases in which we find that the petitioner has demonstrated
18 irreparable injury if a stay is not granted generally involve proposals that destroy
19 or injure unique historic or natural resources, or other interests that cannot be
20 practicably restored or adequately compensated for once destroyed.” *Bryant v.*
21 *Umatilla County*, 45 Or LUBA 700, 702 (2003) (citing *Roberts v. Clatsop*
22 *County*, 43 Or LUBA 577, 583 (2002)). The movant must establish a causative

1 link between the decision on appeal and the asserted irreparable injury. In other
2 words, the movant must establish that a stay of the challenged decision will likely
3 prevent the conduct that causes the injury. *Meyer v. Jackson County*, 72 Or
4 LUBA 462 (2015).

5 For purposes of resolving the motion for stay, we assume that the following
6 undisputed facts are true. Stafford Road is designated a Rural Scenic Road under
7 the Clackamas County Comprehensive Plan. PGE has commenced construction
8 of transmission line improvements pursuant to the CUP, including vegetation
9 removal and transmission pole installation. Petitioner asserts that transmission
10 line construction “site preparation includes removal of hundreds of mature trees,
11 including specimens estimated to exceed 150 years in age. The loss of mature
12 canopy, established root systems, and scenic landscape character cannot be
13 remedied through subsequent grading or pole removal. Such alteration is
14 irreversible for purposes of appellate review.” Surreply 2. Petitioner argues that
15 the scenic quality of Stafford Road is “directly tied to the existing mature
16 vegetation and landscape character. Replacement plantings cannot restore those
17 protected qualities within any meaningful timeframe relevant to judicial review.”
18 *Id.*

19 In *Warren v Washington County*, 78 Or LUBA 1011 (2018), the petitioner
20 alleged that the challenged subdivision approval would have allowed for the
21 removal of 70 percent of a mature grove of trees in the petitioner’s neighborhood.
22 The subject property was included on a map of significant natural resources. We

1 concluded that the petitioner failed to establish an irreparable injury and denied
2 the petitioner’s motion for stay because the petitioner had not demonstrated that
3 the trees proposed for removal were a unique natural resource or that the wildlife
4 habitat provided by the trees could not have been “practicably restored.” *Warren*,
5 78 Or LUBA at 1014-15 (quoting *Roberts v. Clatsop County*, 43 Or LUBA 577,
6 583 (2002)); *see also Central Oregon Landwatch v. City of Bend*, 66 Or LUBA
7 448 (2012) (concluding that a movant for a stay does not demonstrate that an
8 injury from the cutting of trees would be “irreparable” where the movant does
9 not argue that there is anything special about the trees that would be cut down or
10 that their replacement by younger trees would result in irreparable injury to a
11 protected natural resource).

12 In the challenged decision, the county found:

13 “Only 2.7 miles of the 5.9-mile project area is designated as a scenic
14 road and most of that section already has transmission lines within
15 the right-of-way. This section of SW Stafford Road is also part of a
16 planned County road improvement project that will involve
17 additional grading, widening, and tree removal without County land
18 use review. Eight of the other 24 scenic roads within the County
19 have transmission lines within or adjacent to the right-of-way.”
20 Record 8.

21 We conclude that Bartholomew has not demonstrated irreparable injury
22 because they have not established that the vegetation and topography within the
23 PGE transmission line corridor along Stafford Road are unique natural resources
24 or that a stay of the challenged decision will likely prevent further tree removal
25 and excavation. Petitioner has not established that the trees at issue are unique or

1 protected or that the values and benefits provided by the trees cannot be
2 practicably restored. Petitioner has not cited anything that demonstrates that
3 scenic road status depends on qualities or characteristics of roadside vegetation.
4 While mature trees may add to the quality of a scenic road, so may views that are
5 opened by vegetation removal. Similarly, ground disturbance is not a sufficient
6 reason for a stay. *See Roberts*, 43 Or LUBA at 583 (concluding that a stay is not
7 warranted where the site may be regraded). The ground disturbance from PGE's
8 activities is limited to drilling holes for the new utility poles. Declaration of
9 Jordan Messinger in Support of Intervenor-Respondent's Response to Motion for
10 Stay. If the CUP approval is ultimately overturned on review, the new
11 transmission poles can be removed and the holes filled. *Id.* Petitioner has not
12 demonstrated irreparable injury.

13 The motion for stay is denied.

14 Dated this 26th day of February 2026.

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H. M. Zamudio
Board Chair