

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

3
4 SILETZ RESORTS, LLC,
5 *Petitioner,*

6
7 vs.

8
9 LINCOLN COUNTY,
10 *Respondent.*

11
12 LUBA No. 2026-006

13
14 ORDER

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

17 **MOTION TO DISMISS**

18 The county moves to dismiss this appeal on the basis that the challenged
19 decision is not a final land use decision subject to LUBA’s jurisdiction. For the
20 reasons explained below, we deny the motion to dismiss.

21 ORS 197.825(1) limits LUBA’s jurisdiction to review of “land use
22 decisions,” as defined at ORS 197.015(10)(a). Under that definition, a “land use
23 decision” includes a “final decision or determination made by a local government
24 or special district that concerns the adoption, amendment or application of,”
25 among other things, “a land use regulation.” ORS 197.015(10)(a)(A)(iii). In turn,
26 ORS 197.015(11) defines “land use regulation” to mean “any local government
27 zoning ordinance * * * or similar general ordinance establishing standards for
28 implementing a comprehensive plan.” The “finality” requirement of ORS

1 197.015(10)(a) ensures that, prior to invoking LUBA jurisdiction, a petitioner has
2 pursued all local appeals and remedies that are available by right. *O'Malley v.*
3 *Clackamas County*, LUBA No 2025-046 (Oct 21, 2025) (slip op at 7-8).

4 The county argues that this appeal challenges CUPs that became final in
5 the 1990s and that the county counsel is not authorized by the county governing
6 body to make a final decision on CUPs.

7 Petitioner responds, and we agree, that the county misidentifies the
8 challenged decision, which is the county counsel's determination that the CUPs
9 had expired and were not effective in 2025. Petitioner responds that that decision
10 concerns the application of a land use regulation, Lincoln County Code (LCC)
11 1.1620(1) (1994), which provided:

12 "Approval of a conditional use shall be void two years after the
13 effective date of the decision if the authorized development action
14 is not initiated in that period. As used in the subsection, 'initiated'
15 means that on-site sewage disposal construction permits, building
16 permits or other necessary approvals have been secured and
17 exercised or maintained valid or, if no such approvals are required,
18 that the authorized use has been established." *See* Response to
19 Motion to Dismiss 12-13.

20 We resolve the motion to dismiss before we have a complete local record
21 before us.¹ We may consider materials outside the record to determine whether
22 we have jurisdiction to review the decision on appeal. *Murray v. Multnomah*
23 *County*, 56 Or LUBA 370, 373 (2008); *Yost v. Deschutes County*, 37 Or LUBA

¹ We sustain petitioner's record objections later in this order.

1 653, 657-58 (2000); *Hemstreet v. Seaside Improvement Comm.*, 16 Or LUBA
2 630, 631-33 (1988). We take the following facts, which the county has not
3 disputed, from petitioner’s response to the motion to dismiss. Petitioner operates
4 Chinook Bend RV Resort, a recreational vehicle park in operation since 1963.
5 Petitioner purchased the subject property in 2006. In July 1998, the county
6 approved a CUP for a clubhouse building on the subject property. In September
7 1999, the county approved a CUP allowing the park to be expanded from 67
8 spaces to 83 spaces. The concluding paragraph in the 1999 expansion CUP states:
9 “This approval shall be void after two (2) years unless substantial construction
10 pursuant thereto has taken place, as defined in Chapter 1.1620 of the Lincoln
11 County Land Use Code.” Corrected Record 15. The 1999 expansion CUP was
12 intended to legitimize an expansion previously undertaken pursuant to an
13 expansion CUP approved in 1991. Those three CUPs are referred to herein as the
14 CUPs. Since acquiring the property in 2006, petitioner has used the clubhouse
15 building and 83 spaces for the RV park.

16 In the summer of 2025, the county cited petitioner for violations of Oregon
17 Health Authority administrative rules governing operation and maintenance of
18 RV parks, including a rule that required documentation of county land use
19 approval for more than 67 spaces. In response, petitioner requested, and the
20 county provided documentation including applications filed by the previous RV
21 park owner. Petitioner communicated to the county their position that the
22 conditional uses were authorized. On August 27, 2025, petitioner’s former

1 counsel sent a letter to the county development director stating that the subject
2 property had passed numerous inspections and requesting the county file on the
3 subject property. On August 28, 2025, county counsel responded with
4 instructions on how to file a public records request.

5 On December 30, 2025, county counsel sent petitioner’s counsel a letter
6 via email stating that the CUPs had expired because petitioner (or the former RV
7 park owner) did not document compliance with the conditions of approval in the
8 CUPs, including obtaining an access permit, area development permit, and
9 electrical and septic approvals. On January 12, 2026, petitioner requested
10 clarification whether county counsel intended the December 30, 2025, letter to
11 be a final land use decision on the validity of the CUPs, and requested that county
12 identify any applicable local appeal avenues or other relevant procedures. On
13 January 20, 2025, petitioner filed their notice of intent to appeal in this appeal.

14 **A. Authority**

15 The county argues that the county counsel is not authorized by the county
16 governing body to make a final decision on CUPs. OAR 661-010-0010(4) defines
17 “final decision maker” as “the governing body, or a person, commission or other
18 entity authorized by the governing body, that makes the final decision.” As
19 relevant here, the governing body is the county board of commissioners. *See*
20 OAR 661-010-0010(5) (defining “governing body” as “a city, county or special
21 district governing body”). No party argues that the board of commissioners did
22 not authorize county counsel to decide whether the disputed CUPs remain valid,

1 and county counsel had apparent authority to issue the challenged decision. *See*
2 *Love v. Klamath County*, 54 Or LUBA 747, 749 (2007) (finding that a statement
3 in a letter sent by county counsel was a land use decision including a county
4 interpretation of a local code provision by someone with apparent authority to
5 make such a statement). The county does not argue in its motion to dismiss that
6 petitioner was entitled to a local appeal of the challenged decision. Petitioner
7 argues, and we agree, in the circumstances of this appeal, county counsel
8 qualifies as the county’s final decision maker.

9 **B. Substance**

10 Petitioner acknowledges that, generally, decisions concerning whether
11 conditions of approval contained in a land use decision have been satisfied are
12 not land use decisions subject to LUBA review. In *Schofield v. Douglas County*,
13 81 Or LUBA 143, 149-150 (2020), the county counsel had sent an initial letter
14 informing the petitioners that they had failed to satisfy a condition of approval
15 and if they did not satisfy that condition by a date certain, the approval would
16 expire. The county counsel then sent a second letter reiterating that information
17 and concluding that the approval had expired. The petitioners did not assert that
18 the county counsel letter involved the application of land use regulations, or
19 identify any land use regulation that county counsel applied or should have
20 applied. We concluded that the petitioners had not borne their burden to establish
21 that the county counsel letter applied or concerned the application of any land use
22 regulation under ORS 197.015(10)(a) and (11). In a footnote, we observed: “The

1 only land use regulation that the county counsel letter arguably may ‘concern’ is
2 a four-year approval validity regulation. No party cites any such regulation to
3 us. * * * ” *Schofield*, 81 Or LUBA at 150 n 5.

4 We explained:

5 ““A decision that simply concludes that a condition of permit
6 approval is satisfied or not satisfied, is violated or not violated, is
7 not a land use decision as defined by ORS 197.015(10)(a), because
8 it concerns only the application or interpretation of a permit
9 condition of approval, not the application or interpretation of a land
10 use regulation.’ *Noordhoff v. City of North Bend*, 65 Or LUBA 420,
11 422-23 (2012) (citing *Mar-Dene Corp. v. City of Woodburn*, 149 Or
12 App 509, 515, 944 P2d 976 (1997)); *see also Leyden v. City of*
13 *Eugene*, 80 Or LUBA 41, 57, *aff’d*, 300 Or App 403, 450 P3d 1050
14 (2019) (‘[A] dispute over whether a prior condition of approval is
15 satisfied does not give LUBA jurisdiction over a decision that is not
16 otherwise a land use decision.’).

17 “We have jurisdiction to consider an interpretation of a condition of
18 approval only if the challenged interpretation necessarily concerns
19 the application of land use regulations. *Mar-Dene Corp. v. City of*
20 *Woodburn*, 33 Or LUBA 245, 251, *aff’d*, 149 Or App 509, 515, 944
21 P2d 976 (1997). Petitioners have the burden to establish LUBA
22 jurisdiction and demonstrate that the challenged decision applied or
23 should have applied any land use regulations. *Lindsey v. City of*
24 *Eugene*, 37 Or LUBA 695, 699-700 (2000).” *Id.* at 150.

25 In this appeal, petitioner argues, and we agree, that the disputed letter is
26 not merely an interpretation of conditions of approval in the CUPs. The letter
27 interprets and applies a land use regulation, namely, LCC 1.1620 (1994), set out
28 above. Petitioner argued to the county that adequate permitting and construction
29 had occurred to prevent the CUPs from becoming void under operation of LCC

1 1.1620 (1994). That is, under the language of LCC 1.1620 (1994), “necessary
2 approvals ha[d] been secured and exercised or maintained valid or, if no such
3 approvals [were] required, that the authorized use ha[d] been established.” The
4 challenged county counsel letter refers to an access permit, area development
5 permit, and electrical or septic approvals.² Petitioner argues that this appeal
6 concerns disputed facts and proper interpretation of LCC 1.1620 (1994). The
7 county does not argue that LCC 1.1620 (1994) is not a “land use regulation”
8 within the meaning of ORS 197.015(10)(a) or dispute that county counsel applied
9 and interpreted the “initiated” requirement of LCC 1.1620 (1994) to determine
10 whether the CUPs had expired. We agree with petitioner that the challenged
11 decision is a final written determination applying a land use regulation that
12 qualifies as a land use decision under ORS 197.015(10)(a)(A). Therefore, we
13 have jurisdiction to hear this appeal. *See State ex rel Coastal Management v.*

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].” Notice of Intent to Appeal Ex A, at 1.

1 *Washington Cty.*, 178 Or App 280, 285, 36 P3d 993 (2001), *rev den*, 334 Or 190
2 (2002) (holding that a decision under a county’s community development code
3 concerning the expiration of a permit approval, such as a preliminary plat
4 approval, is a “land use decision” within the meaning of ORS 197.015(10)); *see*
5 *also Central Oregon Landwatch v. Deschutes County*, LUBA No 2022-087 (Feb
6 3, 2023), *rev’d and rem’d on other grounds*, 326 Or App 439, 441, 533 P3d 67
7 (2023) (reviewing a county decision that an approved conditional use had been
8 “initiated” and, thus, was not “void” under a county regulation which provided
9 that “a land use permit is void two years after the date the discretionary decision
10 becomes final if the use approved in the permit is not initiated within that time
11 period”).

12 The county’s motion to dismiss is denied.³

13 **RECORD OBJECTIONS**

14 Petitioner objects to the omission of communications between petitioner’s
15 counsel and county counsel and “hundreds of pages of County documents
16 provided by County officials as part of the communications between [petitioner’s
17 counsel] and [county counsel].” Record Objections 2. Petitioner argues that those
18 documents consist of county files pertaining to the land use and permitting history

³ Petitioner filed a conditional motion to transfer to circuit court in the event that we decided that we lack jurisdiction, pursuant to ORS 34.102(4). We do not reach or decide that conditional motion because we conclude that we have jurisdiction.

1 of Chinook Bend RV Resort that were provided by link from a county official to
2 petitioner’s counsel and that were before the county counsel during the course of
3 the exchange that led to the challenged decision. Record Objections 2-3.

4 The county has not filed a response to petitioner’s record objections. In the
5 county’s reply to petitioner’s response to the motion to dismiss, the county asserts
6 that “[p]ermit records unrelated to the land use permits being appealed would not
7 be in the record.” Respondent Memorandum in Reply 1-2.

8 Above, we clarify that the challenged decision on appeal is not the
9 underlying CUPs, but the county counsel’s decision that the CUPs have expired
10 by operation of LCC 1.1620 (1994) because petitioner’s predecessor had not
11 documented that the approved development had been “initiated.”

12 OAR 661-010-0025(1)(b) provides that the record shall include:

13 “All written testimony and all exhibits, maps, documents or other
14 materials specifically incorporated into the record or placed before,
15 and not rejected by, the final decision maker, during the course of
16 the proceedings before the final decision maker.”

17 We agree with petitioner that the record must include correspondence
18 between petitioner’s prior and current counsel and county counsel, and any
19 documents that petitioner or county staff “placed before” the county counsel
20 during the time that county counsel considered whether the CUPs had expired,
21 which appears to us to include the period between August 28, 2025, and
22 December 30, 2025. That documentation should include any evidence, including
23 permits, that was placed before the county counsel to determine whether the

1 approved conditional uses were “initiated” or “established” including but not
2 limited to on-site sewage disposal construction permits, building permits, access
3 permits, other approvals, and other evidence demonstrating whether the
4 authorized conditional uses had been established. Within fourteen days of the
5 date of this order, the county shall transmit an amended record that includes the
6 omitted materials.

7 Dated this 5th day of May 2026.

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H. M. Zamudio
Board Chair