

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

OREGONIANS IN ACTION,)
)
Petitioner,)
) LUBA No. 90-028
vs.)
) FINAL OPINION
LAND CONSERVATION AND DEVELOPMENT) AND
ORDER)
COMMISSION,)
)
Respondent.)

Appeal from Land Conservation and Development
Commission.

David B. Smith, Tigard, represented petitioner.

Gabriella I. Lang, Salem, represented respondent.

KELLINGTON, Referee; SHERTON, Chief Referee; HOLSTUN,
Referee, participated in the decision.

DISMISSED

04/09/90

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

Opinion by Kellington.

NATURE OF THE DECISION

Petitioner seeks review of the Land Conservation and Development Commission's (LCDC) amendment of Statewide Planning Goal (Goal) 4 and OAR 660 Division 6.¹

MOTION TO DISMISS

LCDC moves to dismiss this appeal proceeding on the basis that LUBA lacks jurisdiction to review its adoption of the subject amendments to Goal 4 and OAR 660 Division 6.

Under ORS 197.825(1), LUBA's review jurisdiction is limited to "land use decisions." ORS 197.015(10)(a)(B) specifies that the definition of "land use decision" includes determinations of state agencies other than LCDC. In addition, ORS 197.825(2)(d) specifies that LUBA jurisdiction does not extend to state agency decisions for which the Court of Appeals has initial review authority "under ORS 183.400, 183.482 or other statutory provisions."

Petitioner acknowledges the above statutory limitations on our jurisdiction but, nevertheless, argues that LUBA may review the disputed amendments on the basis that the

¹Petitioner describes the decision it challenges as being LCDC's finding of "compelling reasons" to justify requiring the disputed amendments to become effective prior to the time set for a local government's periodic review under ORS 197.640, or one year after the rule is adopted, whichever occurs later. However, LCDC's adoption of the finding of "compelling reasons" to justify the early effective date of the goal amendment, is necessarily a part of its adopted goal amendment. ORS 197.245. Thus, if LUBA lacks jurisdiction to review the goal amendment, then LUBA also lacks jurisdiction to review LCDC's findings of "compelling reasons".

amendments constitute decisions having "significant impact on present or future land uses." City of Pendleton v. Kerns, 294 Or 126, 133, 653 P2d 992 (1982).

The legislature has made it clear, in the above referenced statutes, that LUBA has no authority to review respondent's adoption of goal or rule amendments. While we agree with petitioner that the amendments will likely have significant impacts on present or future land uses, we do not understand the significant impacts test to give LUBA review authority where review authority is, by statute, both explicitly provided to a different review tribunal, and explicitly removed from LUBA.

We conclude the significant impacts test is inapplicable to give LUBA review authority over this appeal.

Respondent's motion to dismiss is granted.

This appeal is dismissed.