



1 The parties agree the challenged decision does not concern the  
2 adoption, amendment or application of the statewide planning  
3 goals. However, it is undisputed that the decision does  
4 concern application of certain zoning ordinance criteria  
5 governing conditional use permits in the AF-20 Zone.

6 Petitioners claim this fact brings the appeal within our  
7 jurisdiction. They reason as follows: (1) the zoning  
8 ordinance is a "land use regulation" as defined in ORS  
9 197.015(11), (2) the conditional use permit approval criteria  
10 for a non-resource dwelling are set forth in the zoning  
11 ordinance, and (3) therefore, the permit decision concerns the  
12 "application of a land use regulation" and is reviewable by  
13 LUBA. See ORS 197.015(10)(iii); ORS 197.825(1).

14 Respondent takes issue with petitioners' reasoning.  
15 Relying on ORS 197.015(11), respondent points out that in  
16 defining "land use regulation," the legislature excluded  
17 "...small tract zoning map amendments, conditional use permits,  
18 individual subdivisions, partitioning or planned unit  
19 development approvals or denials, annexations, variances,  
20 building permits and similar administrative-type  
21 decisions."<sup>1</sup> In respondent's view, the emphasized language  
22 should be construed to exclude from our jurisdiction the  
23 issuance of a conditional use permit under an acknowledged  
24 comprehensive plan and zoning ordinance.

25 We are unpersuaded by respondent's reading of the exclusion  
26 in ORS 197.015(11). The challenged permit itself is clearly

1 not a "land use regulation." ORS 197.015(11). However, the  
2 zoning ordinance governing issuance of the permit is such a  
3 regulation. Id. This is so regardless of whether the  
4 ordinance has or has not been acknowledged by LCDC. Since the  
5 county issued the challenged permit by applying criteria set  
6 forth in a land use regulation, its action must be considered a  
7 land use decision under ORS 197.015(10)(A)(iii).<sup>2</sup> See  
8 Medford Assembly of God v. City of Medford, 297 Or 138, 681 P2d  
9 790 (1984); See also Burcham v. Yamhill County, \_\_\_ Or LUBA \_\_\_  
10 (LUBA No. 84-089/095), Order Denying Motion to Dismiss at 4-5  
11 (January 22, 1985).

12 We conclude the challenged decision is within our review  
13 jurisdiction. The motion to dismiss is denied.

14 Dated this 9th day of April, 1985.

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18 Laurence Kressel  
19 Referee  
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FOOTNOTES

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3 <sup>1</sup>

ORS 197.015(11) states:

4       "(11) 'Land use regulation' means any local  
5           government zoning ordinance, land division  
6           ordinance adopted under ORS 92.044 or 92.046 or  
7           similar general ordinance establishing  
8           standards for implementing a comprehensive  
9           plan. 'Land use regulation' does not include  
10          small tract zoning map amendments, conditional,  
11          use permits, individual subdivision,  
12          partitioning or planned unit development  
13          approvals or denials, annexations, variances,  
14          building permits and similar  
15          administrative-type decisions."

11 <sup>2</sup>

12       We note also that one of the approval criteria for a  
13       non-resource dwelling in the AF-20 district requires  
14       demonstration that the dwelling "will not be in conflict with  
15       the comprehensive plan." Section 403.07 E. Yamhill County  
16       Zoning Ordinance. Consequently, the decision may also qualify  
17       as a reviewable land use decision under ORS 197.010(10)(A)(iii)  
18       (decision that concerns application of a comprehensive plan).  
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