

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

AUG 15 3 42 PM '80

OF THE STATE OF OREGON

3 GRANT COUNTY, )  
4 Petitioner, ) LUBA No. 80-073  
5 v. ) FINAL OPINION  
6 OREGON DEPARTMENT OF ) AND ORDER  
7 FISH AND WILDLIFE, ) (ORDER OF DISMISSAL)  
8 Respondent. )

9  
10 Appeal from the Oregon Department of Fish and wildlife.

11 Charles woods, Legal Counsel, Grant County, Canyon City,  
12 Oregon.

13 Beverly Hall, Legal Counsel, Oregon Department of Fish and  
14 wildlife, Portland, Oregon.

15 Reynolds, Chief Referee; Cox, Referee; Bagg, Referee;  
16 participated in the decision.

17 DISMISSED

8/15/80

18 You are entitled to judicial review of this Order.  
19 Judicial review is governed by the provisions of Oregon Laws  
20 1979, ch 772, sec 6(a).

1 This matter is before the Board on Respondent's Motion to  
2 Dismiss the Notice of Intent to Appeal on the grounds that the  
3 Board lacks jurisdiction to review Respondent's decision.  
4 Petitioner has responded by moving to dismiss the Motion on the  
5 grounds that it was not timely filed with the Board as required  
6 by the Board's Rules of Procedure, Sec 14(B).

7 Petitioner's Motion to Dismiss Respondent's Motion to  
8 Dismiss is denied. Sec 14(B) of the Board's Rules of Procedure  
9 requires that a challenge to the failure of an adverse party to  
10 comply with any of the requirements of statutes or Board rules  
11 must be filed with the Board within ten days after the moving  
12 party obtains knowledge of such alleged failure. This ten day  
13 requirement does not apply to Motions to Dismiss an appeal for  
14 lack of jurisdiction. Even if the Board could impose a  
15 requirement that challenges to the Board's jurisdiction be made  
16 within a certain period of time, it is clear from a review of  
17 the Board's Rules of Procedure as a whole that the Board did  
18 not intend to do so. The matter of a challenge to the Board's  
19 jurisdiction to review a land use decision could never be  
20 timely under a ten day rule if Respondent raised the matter in  
21 its brief. However, it is clear in Sec 16(D) of the Board's  
22 Procedural Rules that a Respondent may raise the issue of the  
23 Board's jurisdiction in its brief. Thus, we conclude that the  
24 issue of the Board's jurisdiction is not one which is subject  
25 to the ten day rule expressed in Sec 14(B).

26 As to the merits of Respondent's Motion to Dismiss, this

1 Board is in agreement that, based upon the affidavit attached  
2 to Respondent's Motion to Dismiss, which affidavit is  
3 unchallenged by Petitioners, this Board lacks jurisdiction to  
4 review Respondent's decision. The facts involved are as  
5 follows. The Department of Fish and Wildlife presently owns a  
6 parcel of land in eastern Oregon. It has been interested for  
7 some time in exchanging this parcel of land for another parcel  
8 which would be of greater value to the Department from a  
9 wildlife management standpoint. It has recently been exploring  
10 the feasibility of exchanging its presently owned parcel for a  
11 parcel of land known as the Sutphin Ranch. At a regularly  
12 scheduled meeting of the Commission on June 20, 1980 (the date  
13 of the alleged land use decision by the Department of Fish and  
14 Wildlife), the Fish and Wildlife Commission instructed its staff  
15 to continue to investigate the possibility of making the  
16 exchange for the Sutphin Ranch, and further instructed the  
17 staff to return to the commission when and if it was able to  
18 secure a concrete proposal for the commission to consider.

19 Respondent has returned the record in this matter which  
20 consists solely of the minutes of the meeting of the Oregon  
21 Fish and Wildlife Commission, dated June 20, 1980. The minutes  
22 confirm the facts set forth in the affidavit attached to the  
23 Respondent's Motion to Dismiss. The minutes state:

24 "Commissioner Boyer moved to authorize the staff  
25 to proceed with negotiations for trading the Sutphin  
26 Ranch for the Murderer's Creek Base Ranch in Grant  
County per staff recommendation and to develop a  
proposal for the Commission to consider. Commissioner

1 Klarquist seconded the motion. Commissioners  
Klarquist, Kelly, Boyer and Barth voted yes.  
2 Commissioner Steiwer voted no and the motion carried."

3 It is clear from the facts set forth above that the  
4 decision of the Oregon Fish and Wildlife Commission is not a  
5 "land use decision" within the meaning of Oregon Laws 1979 Ch  
6 772, Sec 3(E). It is, quite simply, and as Respondent notes in  
7 its Motion to Dismiss, an internal staff directive having no  
8 final force or effect as an action of the Fish and Wildlife  
9 Commission. It has absolutely no effect on the use of land,  
10 whether immediate or prospective.

11 The minutes reflect concern expressed by Grant County that  
12 more coordination was needed between the County and the Fish  
13 and Wildlife Commission in order to comply with the statewide  
14 goals. If the Fish and Wildlife Commission completes the  
15 exchange of property and if that exchange is determined to be a  
16 land use decision, and finally, if the County feels that the  
17 Fish and Wildlife Commission has failed to coordinate its  
18 decision making with the County, then the concerns of Grant  
19 County can be raised at that time. As matters now stand, this  
20 appeal is premature as no final decision or determination of  
21 the Fish and Wildlife Commission has yet been made.

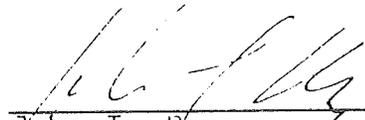
22 Now therefore it is hereby ordered that Petitioner's Notice  
23 of Intent to Appeal is dismissed.

24 Dated this 15th day of August, 1980.

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John T. Bagg  
Hearings Referee