



1 Holstun, Referee.

2 Petitioner in this proceeding also filed a Notice of Intent  
3 to Appeal in Kunkel v. Washington County, LUBA No. 87-060. In  
4 that proceeding, petitioner is challenging the county's action  
5 on June 10, 1987 approving emergency livestock disposal on a  
6 site in the AF-10 Zone in Washington County.

7 In this second proceeding (LUBA No. 87-117), petitioner  
8 challenges a letter from the county counsel. The letter is to  
9 the attorney for the applicant for the emergency livestock  
10 disposal decision challenged in LUBA No. 87-060. It provides  
11 written confirmation that the June 10, 1987 approval continues  
12 in effect, noting the existence of the pending appeal before  
13 this Board in LUBA No. 87-060 and the fact no stay of the  
14 county's decision has been requested.<sup>1</sup> See ORS 197.845.

15 The county counsel's letter apparently was provided to the  
16 Oregon Department of Environmental Quality (DEQ) in support of  
17 a requested renewal of a June 8, 1987 letter of authorization  
18 from DEQ for a temporary solid waste disposal site for disposal  
19 of lamb carcasses. DEQ issued a letter approving the renewal  
20 application on November 18, 1987. In its letter, DEQ refers to  
21 the October 2, 1987 letter from the Washington County Counsel  
22 as follows:

23 "We are in receipt of a land use approval from  
24 Washington County Planning Department, dated  
25 October 2, 1987 for this proposed temporary solid  
26 waste disposal site."<sup>2</sup>

On December 18, 1987, petitioner initiated this proceeding

1 by filing a Notice of Intent to Appeal the October 2, 1987  
2 letter. On December 18, 1987, petitioner also filed a motion  
3 to consolidate the proceedings in LUBA Nos. 87-060 and 87-117;  
4 and, in addition, filed what petitioner calls the record in  
5 LUBA No. 87-117 and a supplement to the record in 87-060. On  
6 December 23, 1987, petitioner filed a "consolidated petition  
7 for review and brief" in LUBA Nos. 87-060 and 87-117.

8 On December 31, 1987, respondent county filed a motion to  
9 dismiss LUBA No. 87-117. The county argues the letter  
10 challenged in LUBA No. 87-117 is not a land use decision. The  
11 county also objects to the motion to consolidate and to  
12 petitioner's unilateral attempt to supplement the record in  
13 LUBA No. 87-060.

14 In his consolidated petition for review, petitioner makes  
15 the following statement:

16 "Petitioner does not believe that a letter from county  
17 counsel constitutes a land use decision under  
18 Washington County's Community Development Code (CDC),  
19 or that it constitutes a 'decision' at all, since the  
20 code does not authorize county counsel to render land  
21 use decision or 'type I' decisions. CDC Section  
22 202-1.3. However, petitioner challenges that  
23 October 2, 1987 letter herein as well, to protect  
24 petitioner's interest in the event the county or  
25 applicant should argue that the October 2 letter was a  
26 land use decision that superseded the earlier  
decision." Consolidated Petition for Review at 1-2.

Like the petitioner and respondent county, we do not  
believe the October 2, 1987 letter is a land use decision  
subject to our jurisdiction. ORS 197.015(10). The letter does  
not purport to be a land use decision or to supersede prior

1 county actions. The letter does note that the county code  
2 expressly provides county permit holders may, absent a stay or  
3 injunction, proceed at their own risk pending an appeal of a  
4 permit approval to circuit court or this Board.

5 The letter does not apply the goals, a comprehensive plan  
6 provision or a land use regulation to grant or deny county  
7 approval. As far as we can tell, it is not a decision of any  
8 kind. It is not a land use decision within the meaning of  
9 ORS 197.015(10).<sup>3</sup> Accordingly, the motion to dismiss is  
10 allowed.

11 In view of our decision that this proceeding must be  
12 dismissed, the motion to consolidate this proceeding with the  
13 proceeding in LUBA No. 87-060 is also denied.

14 As the only record filed in this proceeding was filed by  
15 petitioner, there shall be no recovery of costs and  
16 petitioner's deposit for costs shall be returned.

FOOTNOTES

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The letter refers to a land use compatibility statement issued by the county on April 16, 1987, as well as the June 10, 1987 approval challenged in LUBA No. 87-060.

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During a January 6 conference with the parties, the Board was advised the reference to the "Washington County Planning Department" was an error and the letter referred to by DEQ was the October 2, 1987 letter from the county counsel.

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ORS 197.015(10) provides:

"(10) Land use decision":

"(a) Includes:

"(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

"(i) The goals;

"(ii) A comprehensive plan provision;

"(iii) A land use regulation; or

"(iv) A new land use regulation; or \* \* \*."