

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

Dec 10 4 16 PM '80

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3	N.O.P.E. IN MULINO,)	
4	Petitioner,)	LUBA No. 80-096
5	v.)	FINAL OPINION
6	THE PORT OF PORTLAND,)	AND ORDER
7	Respondent.)	(ORDER OF DISMISSAL)

8 Appeal from The Port of Portland, Clackamas County.

9 Frank Josselson, Lang, Klein, Wolf, Smith, Griffith &
10 Hallmark, Attorneys, Portland, Oregon.

11 Donald J. Morgan, Legal Counsel, The Port of Portland,
12 Portland, Oregon.

13 REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee;
14 participated in this decision.

15 DISMISSED 12/10/80

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

1 REYNOLDS, Chief Referee.

2 This matter is before the Board on respondent's Motion to
3 Dismiss the Notice of Intent to Appeal on the grounds that the
4 decision appealed from is not a land use decision.

5 Respondent's Motion to Dismiss was accompanied by an affidavit
6 of its executive director as well as a legal memorandum.

7 Petitioner has not filed a response to the motion.

8 The Notice of Intent to Appeal sets forth, as the decision
9 being appealed, "the siting of a Reliever Airport at Mulino, an
10 unincorporated area of Clackamas County, Oregon." The
11 affidavit of respondent's executive director, which is
12 unchallenged by petitioner, reveals that respondent's action
13 consisted only of its approval of a study recommending Mulino
14 as the preferred site for a new airport and its authorization
15 of the preparation of a master plan and environmental
16 assessment report for the Mulino site. When the master plan
17 and environmental assessment are completed, these will be
18 submitted to the Port Commission which then will decide whether
19 to proceed with the proposed airport development. This is
20 estimated to occur sometime in early 1981. At the present
21 time, however, the Port Commission has not authorized the
22 acquisition of the Mulino site, nor the development of a
23 general aviation airport at that location, or anywhere else in
24 Clackamas County.

25 Based upon the foregoing facts, we conclude that the
26 "decision" of the Port of Portland which is involved in this

1 appeal is not a "land use decision" within the meaning of
2 Oregon Laws 1979, chapter 772, section 3(E). A land use
3 decision within the meaning of section 3 is defined, in part,
4 as a "final decision or determination." There is no finality
5 with respect to respondent's decision to proceed with further
6 studies of the Mulino site in terms of the decision's effect on
7 the immediate or prospective use of land. See: Grant County
8 v. Oregon Department of Fish and Wildlife, ___ Or LUBA ___
9 (LUBA No. 80-073, Final Opinion and Order of Dismissal,
10 8/15/80).

11 This Board has jurisdiction only to review land use
12 decision as defined in Oregon Laws 1979, chapter 772, section
13 3(E). Respondent's decision is not a land use decision.
14 Respondent's Motion to Dismiss is granted and the Notice of
15 Intent to Appeal in this matter is dismissed.

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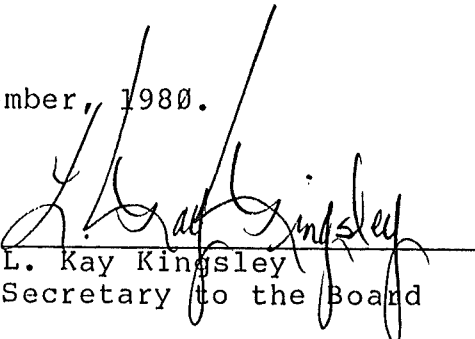
CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Final Opinion and Order of Dismissal for LUBA No. 80-096, on December 10, 1980, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 10th day of December, 1980.


L. Kay Kingsley
Secretary to the Board