

LAND USE
BOARD OF APPEALS

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

Nov 28 2 00 PM '89

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BAKER CITIZENS FOR SAFE INDUSTRY,)
CONCERNED DURKEE CITIZENS,)
DEBORAH FRIEDMAN, and TED BLOOMER,)
Petitioners,)
vs.)
BAKER COUNTY,)
Respondent,)
and)
ASHGROVE CEMENT WEST, INC.,)
Intervenor-Respondent.)

LUBA No. 89-121
FINAL OPINION
AND ORDER

Appeal from Baker County.
Mark J. Greenfield, Portland, represented petitioners.
Douglas W. Johnson, Baker, represented respondent.

Steven L. Pfeiffer, Portland, represented intervenor-respondent.

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

DISMISSED 11/28/89

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

1 Opinion by Sherton.

2 Petitioners filed a Motion for Order of Dismissal
3 requesting that this case be dismissed. Petitioners state that
4 the decision challenged in this appeal is an August 23, 1989
5 land use compatibility statement issued by respondent concerning
6 the modification of a Department of Environmental Quality (DEQ)
7 air contaminant discharge permit. Petitioners represent that
8 the compatibility statement was based on an August 17, 1989,
9 Baker County Planning Commission (planning commission) decision.
10 Petitioners contend the planning commission decision was timely
11 appealed to the Baker County Court (county court).

12 According to petitioners, on October 27, 1989, the county
13 court issued an order affirming the planning commission's
14 decision. Petitioners state that as a result of the county
15 court decision, a new compatibility statement was issued by the
16 county planning director on November 2, 1989. The planning
17 director explained, in a November 7, 1989 letter to DEQ, that
18 the November 2 compatibility statement "supercedes and replaces"
19 the August 23 statement. Petitioners argue that because the
20 August 23, 1989 decision, which is the subject of this appeal,
21 has been superseded and replaced, this case is moot, and the
22 appeal should be dismissed.

23 Respondent and intervenor-respondent make no response to
24 petitioners' motion.

25 Based on the uncontroverted facts presented to us by
26 petitioners, we agree with petitioners that the November 2, 1989

1 land use compatibility statement supersedes the August 23, 1989
2 compatibility statement challenged in this appeal and,
3 therefore, this appeal is moot.

4 This appeal is dismissed.¹
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23 ¹On September 19, 1989, respondent Baker County filed a Motion to Strike
24 petitioners' notice of intent to appeal in this proceeding. This motion to
25 strike is essentially a motion to dismiss the appeal on the grounds that
26 petitioners did not appeal the planning director's decision to sign the
August 23, 1989 compatibility statement to the planning commission.
Because we dismiss the appeal based on petitioners' motion to dismiss, we
need not act on respondent's motion to strike.