

1 implement this resolution.” Respondent’s Motion to Dismiss
2 Exhibit A 1.

3 The Resolution lists several reasons for discontinuing the Committee, including
4 potential legal liability, increased costs to applicants, and statutory time
5 constraints. *Id.* On March 2, 2016, petitioners appealed the Resolution to
6 LUBA.

7 The county moves to dismiss the appeal on two bases. First, the county
8 argues that the resolution is not a “final” decision within the meaning of ORS
9 197.015(10)(a).¹ The county argues that the Resolution is “simply a
10 preliminary administrative action by the [county] that directs staff to prepare a
11 future ordinance that, if and when it is adopted, will be an appealable
12 legislative land use decision.” Motion to Dismiss 3.

13 Petitioners respond that the Resolution is not merely a recommendation,
14 because it actually discontinues the Committee upon adoption of the
15 Resolution, and hence, it is “final.” Petitioners’ Response 6-7. Petitioners

¹ ORS 197.015(10)(a)(A) defines “land use decision” to include:

“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[.]”

1 maintain that the fact that the Resolution also directs county planning staff to
2 initiate future amendments to the CCCP and LWDUO to memorialize the
3 discontinuance of the Committee does not mean that the Resolution is not final,
4 because the Committee no longer exists. Petitioners' Response 6.

5 Generally, a decision that merely initiates a legislative proceeding
6 leading to future amendments to a local governments' comprehensive plan or
7 zoning regulations is not a final decision. *Sensible Transportation v. Metro*,
8 100 Or App 564, 787 P2d 498, *rev den* 310 Or 70 (1990); *Setniker v. Polk*
9 *County*, 58 Or LUBA 87 (2008); *No Tram to OHSU v. City of Portland*, 40 Or
10 LUBA 411 (2001). Thus, if a resolution merely constitutes a non-binding initial
11 step in a legislative process, then the resolution is not a final decision that is
12 reviewable by LUBA, even though it may lead to separate, future decisions to
13 amend the comprehensive plan or land use regulations. In order to determine
14 whether the Resolution is a final decision for purposes of ORS 197.015(10)(a),
15 we look to the language of the Resolution.

16 The Resolution does two things. First, it discontinues the Committee,
17 without condition or reservation. Second, the Resolution initiates a legislative
18 process to adopt comprehensive plan and land use regulation amendments
19 necessary to implement the first decision. But the effect of the board of county
20 commissioners' action is not delayed or conditioned on future adoption of
21 amendments to the CCCP or the LWDUO. It is also not an expression of the
22 board of commissioners' preference to discontinue the Committee at some

1 future date. *McKenzie River Guides Ass'n v. Lane County*, 19 Or LUBA 207
2 (1990). Accordingly, the Resolution is both a final determination that the
3 Committee “is discontinued” and an initial step in a future legislative process.
4 We agree with petitioners that the decision in the Resolution to discontinue the
5 Committee is “final” within the meaning of ORS 197.015(10)(a).

6 Second, the county argues that even if the Resolution is a “final”
7 decision, it does not amend or apply a comprehensive plan provision or a land
8 use regulation because that action will occur during the legislative proceeding
9 initiated by the Resolution. The county argues that lockstep consistency
10 between a resolution that initiates a legislative process and pending future
11 amendments to existing planning documents is not required, and argues that
12 timing inconsistencies between resolutions that initiate a legislative process
13 and existing plan and land use regulation language do not transform the
14 initiating resolution into a *de facto* amendment to the comprehensive plan. The
15 county also relies on County Code of Regulations (CCR) Section 1.04.030,
16 which authorizes the board of county commissioners to create and discontinue
17 advisory committees as it deems appropriate.

18 CCCP Goal 1, Citizen Involvement, explains that the Committee is
19 active in Clatsop County. Petitioners’ Response Exhibit 1 at 7. The Southwest
20 Coast Community Plan, a part of the comprehensive plan, also provides that the
21 Committee “shall constitute the officially recognized body to represent the
22 community on matters of land use planning.” Petitioners’ Response Exhibit 2 at

1 9. LWDUO 4.108 provides that the Committee “shall serve as a Design Review
2 Advisory Committee for Arch Cape and will review development proposals
3 and make recommendations to the Community Development Director and
4 Planning Commission concerning the design and scenic view aspects of
5 proposed developments.”² Petitioners’ Response Exhibit 3. Petitioners respond
6 that given the role that the above provisions assign to the Committee, the
7 Resolution is a *de facto* amendment of the CCCP and the LWDUO, and
8 “concerns the * * * application of * * * [a] comprehensive plan provision * * *

² LWDUO 4.108 provides:

“Design Review Advisory Committee.

“The [committee] shall serve as a Design Review Advisory Committee for Arch Cape and will review development proposals and make recommendations to the Community Development Director and Planning Commission concerning the design and scenic view aspects of proposed developments.

“(1) Meetings/Records. The committee shall hold regular meetings on the first and third Wednesday of each month at the Arch Cape Fire Hall or designated sites. However, meetings may be canceled when there are no design review plans submitted for review by the Committee. The deliberations and proceedings of the committee shall be public. The Community Development Department shall keep minutes of the committee meetings and such minutes shall be public record.

“(2) The Design Review Advisory Committee shall submit their recommendations to the Community Development Director within seven (7) working days of their decision.”

1 [and a] land use regulation[.]” ORS 197.015(10)(a). According to petitioner, by
2 discontinuing a committee that the CCCP and LWDUO specifically assign a
3 review role, the county has effectively amended the CCCP and LWDUO to
4 eliminate the provisions of CCCP Goal 1 that provide for the Committee, and
5 to eliminate LWDUO 4.108, without compliance with ORS 197.610 to 197.625
6 and LCDC rules implementing the statutes or with applicable LWDUO
7 procedures for amending the CCCP and LWDUO.

8 Based on the current briefing, we agree with petitioners that the
9 Resolution concerns the application of a comprehensive plan and a land use
10 regulation and is therefore a land use decision.³ The action taken in the
11 Resolution to discontinue the Committee is essentially a decision to conduct
12 design and development review in the Arch Cape area without the participation
13 of the Committee, as otherwise required by the CCCP and the Southwest
14 Coastal Community Plan, which assign a planning role to the Committee, and
15 with LWDUO 4.108, which assigns a specific role in development review to
16 the Committee and requires a recommendation on development applications in
17 the Arch Cape area from the Committee to the county planning director. The
18 decision to discontinue the Committee, and to proceed to conduct design and
19 development review without the Committee, seems to us to “concern” the

³ We do not mean to suggest that a different county decision such as a decision to eliminate funding for a committee or commission that is assigned a specific role in the county’s planning documents would be an amendment of the county’s planning documents.

1 application of those CCCP and LWDUO provisions for purposes of ORS
2 197.015(10)(a). Indeed, the county's decision to initiate comprehensive plan
3 and land use regulation amendments to eliminate the plan and code basis for
4 the Committee's role suggests precisely that. If the county's decision to
5 discontinue the Committee did not concern the application of the CCCP and
6 LWDUO provisions that authorize the Committee's role in the development
7 and design review process, it would not seem necessary to initiate
8 comprehensive plan and land use regulation amendments to eliminate that role.
9 Whether viewed as a *de facto* amendment of those CCCP and LWDUO
10 provisions, as petitioners argue, or as an action that is arguably inconsistent
11 with those provisions, we conclude that for purposes of ORS 197.015(10)(a)
12 the Resolution concerns the application of those plan and code provisions, and
13 therefore qualifies as a land use decision subject to LUBA's jurisdiction.

14 We are also not persuaded by the county's reliance on the CCR Section
15 1.04.030, which authorizes the board of county commissioners to create and
16 discontinue advisory committees as it deems appropriate. While CCR 1.04.030
17 may provide *the authority* for the county to discontinue the Commission, it
18 does not absolve the county from ensuring that its actions are consistent with
19 any applicable comprehensive plan and land use regulations.

20 The county's motion to dismiss is denied.

1 **BRIEFING SCHEDULE**

2 The record was received by the Board on March 22, 2016. Petitioners
3 shall have 14 days from the date of this order to file objections to the record. If
4 petitioners do not file objections to the record within the time set forth above,
5 the petition for review shall be due 21 days from the date of this order; the
6 response brief shall be due 42 days from the date of this order; and the Board’s
7 final opinion and order shall be due 77 days from the date of this order.

8 Dated this 24th day of May, 2016.

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Melissa M. Ryan
Board Member