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BEFORE THE LAND USE BOARD OF APPEALS

STATE OF OREGON

4	CITY OF FLORENCE,	)	
		)	
5	Petitioner,	)	LUBA No. 79-019
		)	
6	vs.	)	FINAL OPINION
		)	AND ORDER
7	LANE COUNTY,	)	
		)	
8	Respondent.	)	

9 Appeal from Lane County.

10 David L. Clark, City Attorney, Florence, argued the cause  
11 and filed a petition for review on behalf of the City of  
12 Florence.

13 William A. Van Vactor, Acting Legal Counsel, Lane County,  
14 argued the cause and filed the brief for Respondent.

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

17 Affirmed

06/16/80

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 REYNOLDS, Chief Referee

2 NATURE OF THE DECISION

3 Petitioner appeals the adoption by Lane County of Ordinance  
4 15-79, entitled "In the Matter of Amending Chapter 10 of Lane  
5 Code To Add A Zoning District Entitled "Interim Urbanizing  
6 Combining District (/U)." Petitioner seek to have the  
7 ordinance invalidated on the basis that it violates LCDC Goals  
8 11, 14 and 18 and conflicts with the recommendations and  
9 findings of the Lane County Coastal Subarea Comprehensive  
10 Plan.

11 STATEMENT OF FACTS

12 Ordinance 15-79 establishing the interim urbanizing  
13 combining district (hereinafter "/U"), is, by the terms of the  
14 ordinance,

15 "[I]ntended to be applied to those lands which  
16 are currently non-urban in nature, but which are:

17 "(1) Within an area designated as an urban  
18 growth area by the Comprehensive Plan of Lane County,  
19 and

20 "(2) Lands recognized by the Plan as suitable  
21 for conversion to urban uses at some future date.  
22 Lane Code, sec 10.122-05, as amended by /U.

23 The ordinance can only be used in conjunction with  
24 another primary zoning district to establish land use  
25 standards. The ordinance provides that:

26 "It may be used where appropriate in conjunction with  
the Suburban Residential District (RA), Single-Family  
Residential District (R-1), Public Reserve District  
(PR) and Neighborhood Commercial District (C-2)." Id.

1           The permitted buildings and uses, conditional uses and site  
2 and development requirements for lands to which /U is applied  
3 are as provided in the parent zoning district (i.e., RA, R-1,  
4 PR, and C-2).

5           What the /U does, essentially, is to require a ten acre  
6 minimum lot size, subject to exceptions which will be set forth  
7 below, unless the land is "served by a community water supply  
8 and community sewerage system." If land is served by a  
9 community water supply and community sewerage system, then the  
10 minimum lot area shall be as provided by the respective parent  
11 zoning district with which /U is combined.

12           If there is no community sewerage system, for example, the  
13 ten acre minimum lot size must apply, "except that smaller lot  
14 areas may be permitted where:

15  
16           "(a) Initial connection to a community sewerage  
17 system is not feasible.

18           "(b) The proposed parcel size, configuration and  
19 number will be consistent with the long range sewerage  
plan for the area where such plans exist.

20           "(c) The proposed land division will be  
21 adequately served by interim sewerage disposal  
22 facilities and will not adversely affect other  
properties by causing water pollution.

23           "(d) The design and operation of the proposed  
24 land division or development will allow for later  
25 conversion to urban densities in an orderly and  
26 efficient manner and not otherwise preempt the subject  
property and other properties from:

          "(i) later inclusion into community sewerage  
system;

3.

1           "(ii) inclusion into a/the city.  
2           "(iii) the orderly provision of other community  
3 services and facilities." Sec 10.122-42(2).

4           The way /U works is that when combined with a parent zoning  
5 district, such as RA (Suburban Residential), the minimum lot  
6 size for the area zoned RA/U is 6,000 square feet, provided  
7 community water and sewer is available to service the  
8 property. (6,000 square feet is the minimum lot size for the  
9 RA zone in Lane County). If community sewer and water is not  
10 available with respect to the particular land within the RA/U  
11 zone, then a 10 acre minimum lot size applies to the area  
12 unless a determination is made that a lot size smaller than 10  
13 acres meets the exceptions requirements set forth above. Lane  
14 County indicated during its public hearings that the exceptions  
15 requirement would, most generally, be met if DEQ would give  
16 approval to septic tanks. Testimony indicated it was expected  
17 that DEQ would give its approval in most cases for lot sizes  
18 ranging from 12,000 to 15,000 square feet. Thus, the effect of  
19 /U, at least according to petitioner, is to allow for the most  
20 part in an RA/U zone a minimum lot size of 6,000 square feet  
21 where a community water system is available and 12,000 to  
22 15,000 square feet where a community water system is not  
23 available.

#### 24 SUMMARY OF ARGUMENTS

25           Petitioner assert that the affect of the adoption of /U is  
26 two-fold:

1           1. The ordinance (Lane Code sec 10.122-42(1)) allows  
2 development to high urban densities (6,000 square foot minimum  
3 lot sizes in an RA zone) solely on the basis that a community  
4 water system and sewer system is available to serve the  
5 property. The ordinance violates Goal 11 because it does not  
6 provide for the coordinated development of other public  
7 facilities and services and because it contains no findings  
8 concerning the carrying capacity of the air, land and water  
9 resources. The ordinance violates Goal 14 because it allows  
10 development to urban densities on lands designated  
11 urbanizable. The ordinance violates Goal 18 because it  
12 contains no findings with respect to beach and dune forms in  
13 the Florence Urban Service Boundary area. The ordinance  
14 violates the Western Lane Subarea Comprehensive Plan because it  
15 allows development at densities greater than those provided in  
16 the Subarea plan.

17           2. The ordinance (-42(2)) specifies that in the absence of  
18 a community water system or a community sewerage system, the  
19 minimum lot size area shall be ten acres. Lane County  
20 indicated during the public hearings, however, its intention to  
21 apply the "exception" to the 10 acre requirement contained in  
22 /U in such a way that absent a community sewerage system, the  
23 county will allow lots of 12,000 to 15,000 square feet,  
24 provided they receive DEQ's approval for the siting of septic  
25 tanks. Use of septic tanks allows the potential for septic  
26 tank failures which would require conversion to collective

1 treatment systems, in violation of Goal 11. As with -42(1), no  
2 consideration was given to the carrying capacity of the area,  
3 also in violation of Goal 11. Goal 14 has been violated in  
4 that 12-15,000 square foot lots will not be capable of  
5 conversion to normal city lot sizes upon their eventual  
6 annexation to the city or upon the extension of public  
7 facilities and services. No findings were made in adopting  
8 -42(2) concerning beach and dune forms, in violation of Goal  
9 18. Finally, the subarea plan was violated because the plan  
10 specifies intensive development such as would be allowed under  
11 the exception provision, is not to be allowed within the  
12 Florence USB without connection to adequate public facilities.

13 Respondent contends in its brief that petitioner lack  
14 standing to challenge /U because, at present and until /U is  
15 actually applied to some land within the Florence urban service  
16 boundary (USB), petitioner has not and cannot demonstrate that  
17 its interests have been adversely affected or it has been  
18 aggrieved by /U. Secondly, respondent argues that /U was a  
19 legislative decision and that it can only be reviewed by this  
20 Board for arbitrariness or violation of constitutional law.  
21 Finally, respondent contends that all that really exists here  
22 is a policy dispute between petitioner and Lane County as to  
23 what the appropriate minimum lot size within the urban service  
24 boundary should be. Respondent asserts that the lot size which  
25 it selected is supported by evidence in the record and,  
26 therefore, must be sustained.

1     STANDING

2             Petitioner's standing is challenged by respondent.  
3     Respondent's argument, as previously mentioned, is that  
4     petitioner has not presently been affected by /U and will only  
5     be affected, if at all, when /U is combined with the parent  
6     zoning designations within the urban service boundary.  
7     Respondents believe that the city will have ample opportunity  
8     at that time to participate in the decision making process and  
9     to appeal the county's decision to combine /U if the city is  
10    unhappy with the decision. Moreover, the county maintains that  
11    there is a provision in the Lane Code that requires site review  
12    of actual development of land even after /U has been combined  
13    with the parent zoning districts. Inasmuch as determinations  
14    with respect to lot sizes are made as part of site review, the  
15    city may participate and may appeal if dissatisfied with the  
16    decisions made.

17            Because /U is a legislative ordinance, standing is governed  
18    by Oregon Laws 1979, ch 772 sec 4(2), which provides that "any  
19    person whose interests are adversely affected or who is  
20    aggrieved by a [legislative] land use decision . . .may  
21    petition the board for review of that decision . . .". Under  
22    this test a person must not only demonstrate that its interests  
23    have been affected but that those interests have been adversely  
24    affected, or at least that the person has been aggrieved.

25            While the interests of the city may be affected directly  
26    when the county makes actual development decisions involving

1 the application of /U, and while the city may have the  
2 opportunity to participate during the site review proceedings  
3 concerning these decisions, it does not necessarily follow that  
4 the city's interests have not been affected by the adoption of  
5 /U. It is clear from the written record that the intent in  
6 adopting /U was to have it apply within the Western Lane  
7 planning area, including the Florence USB, and to have it apply  
8 right away. During oral argument before this Board the city  
9 asserted and the county admitted that the county has, indeed,  
10 already combined the /U designation with parent zoning  
11 designations on lands within the Western Lane planning area.  
12 The written record shows that the hearings on adoption of /U  
13 were held at the same time as the hearings on adoption of the  
14 separate ordinance which would combine /U with existing zoning  
15 designations. /U was combined with existing parent zoning  
16 designations, according to the parties' oral testimony before  
17 this Board, by separate ordinance adopted immediately after the  
18 county adopted /U.<sup>1</sup>

19 The adoption of /U and its virtually simultaneous  
20 application to lands within the Western Lane planning area via  
21 a separate ordinance combining /U with existing zoning  
22 designations is part of an overall scheme for zoning land and  
23 providing standards for its division within the Florence USB.  
24 For this reason the adoption of /U cannot be viewed in  
25 isolation, but must be viewed as an integral part of the  
26 overall planning process. Florence has a legitimate interest

1 in zoning actions by the county involving or, at least,  
2 potentially involving lands within its urban service boundary.  
3 The city and county have joint planning responsibilities in  
4 this area even though the county retains authority to zone the  
5 land until annexed to the city. See, e.g., Goal 14  
6 (Urbanization). While the adoption of /U by itself in some  
7 other scheme may not have affected the interests of the City of  
8 Florence sufficiently to give it standing to appeal, given the  
9 context in which it was adopted in the present case the  
10 ordinance has sufficiently affected the city's interests so as  
11 to confer standing to appeal the ordinance.

12 The interests of the City of Florence have been adversely  
13 affected as a result of the adoption by Lane County of /U. The  
14 City of Florence desires to have a minimum lot size for  
15 residential development within its planning area of 9,000  
16 square feet. /U, in conjunction with an RA zone, allows a  
17 minimum lot size for residential development of 6,000 square  
18 feet when community water and sewer systems are available.  
19 This is inconsistent with the stated desires of the city.  
20 Thus, we conclude that the interests of the city have been  
21 adversely affected by this ordinance.

22 In addition, Florence, has stated its desire to limit lot  
23 sizes when public services are not available to 19,000 square  
24 feet so as to allow later division into 9,000 square foot lots  
25 when public services are available. /U would allow smaller lot  
26 sizes provided the exceptions in the ordinance can be met.

1 Lane County has indicated an intent to allow lot sizes of  
2 12,000 to 15,000 square feet where septic tank approval from  
3 DEQ can be obtained. Because this is contrary to the stated  
4 desires of Florence, we conclude its interests have been  
5 adversely affected by the adoption of /U.

6  
7 MERITS

8 Before attempting to discuss petitioner's assignments of  
9 error, it is important to analyze what it is that /U does. It  
10 is the Board's view that all the ordinance does is to set the  
11 minimum requirements pertaining to sewer and water service  
12 which must be met before land division within the areas covered  
13 by /U may occur. If community water and sewerage systems are  
14 in place, then the jurisdiction may conclude that the public  
15 facility and service requirements of Goal 11 with respect to  
16 provision of sewer and water have been satisfied. The county  
17 must still consider other aspects of Goal 11, such as adequacy  
18 of police and fire protection, schools and other key  
19 facilities. The same is true if no community sewerage system  
20 is available and a land division with lots of less than 10  
21 acres is proposed under the exception procedure of /U (i.e.,  
22 sec 10.122-42(2)). If the county satisfies itself that the  
23 lots proposed are designed for eventual hook-up to public  
24 sewers in accordance with a sewerage plan, providing one is in  
25 effect, that the interim sewerage disposal facilities (e.g.  
26 septic tanks) will have an adequate drainfield, that the lots

1 created are appropriate for the future creation of urban size  
2 lots, and that, finally, the lots will not interfere with the  
3 future extension of public facilities and services, then the  
4 county may conclude that the lots so created meet the public  
5 facilities and services requirements of Goal 11 relative to  
6 sewer and water. All other relevant aspects of Goal 11 must  
7 still be considered until such time as there is an acknowledged  
8 comprehensive plan for the area involved.

9 Thus, we conclude that /U is not a complete partitioning or  
10 subdivision ordinance, such that compliance with the terms of  
11 /U would entitles a person to divide land to the densities  
12 allowed with no further showing under Goal 11 or Goal 14  
13 needing to be shown. The additional matters to be shown under  
14 Goal 11 have already been discussed briefly. Under Goal 14, if  
15 the proposed land division is to urban densities,<sup>2</sup> a person  
16 must still demonstrate that the proposed division meets the  
17 conversion criteria for converting urbanizable land to urban  
18 uses.<sup>3</sup>

19 Just because the county concludes that sewer and water  
20 service can be made available to serve a proposed land division  
21 does not mean that Goal 18 or the Western Lane Subarea  
22 Comprehensive plan has no further application or could not, in  
23 a particular case, prevent the land division from occurring.  
24 If, for example, the proposed land division is on an active  
25 foredune, no development can take place in the absence of the  
26 county taking a valid exception to the goal. Similarly,

1 assuming that the recommendations of the Subarea plan are  
2 binding on the county, the county may not approve a land  
3 division which would otherwise comply with the requirements of  
4 /U if the division would violate the subarea plan's  
5 recommendation.

6 With this summary of what it is that /U does and what a  
7 person seeking a land division must do in addition to /U in  
8 order to have the division approved, we turn to the specific  
9 assignments of error.

10 1. First Assignment of Error - Goal 11

11 The city argues that /U violates Goal 11 because the  
12 ordinance does not provide for the coordinated development of  
13 other public facilities and services and because no findings  
14 were made concerning the carrying capacity of the air, land and  
15 water resources. In addition, the city argues that use of  
16 septic tanks in the absence of a community sewerage system to  
17 allow the creation of 12-15,000 square foot lots allows the  
18 potential for septic tank failures which would require  
19 conversion to collective treatment systems, in violation of  
20 Goal 11.

21 Concerning the first aspect of this assignment, the county  
22 was not required to provide in /U for the coordinated  
23 development of other public facilities, nor to make findings  
24 concerning the carrying capacity of the air, land and water.  
25 All /U does, as previously mentioned, is to cover that portion  
26 of Goal 11 relative to provision of sewer and water. Other

1 relevant aspects of Goal 11 need also be compiled with  
2 independently of compliance with /U. It would only be required  
3 that /U contain or embody other relevant aspects of Goal 11 if  
4 the intent and purpose of the county in adopting /U were to  
5 have compliance with /U be the equivalent of compliance with  
6 all of Goal 11. We can, however, find no such intent or  
7 purpose in the enactment of /U.

8 Concerning that portion of the first assignment of error  
9 having to do with septic tank failures, we cannot tell whether  
10 the city is contending that septic tanks are not permitted  
11 outright within an urban growth or urban service boundary, or  
12 whether the city is contending that there is simply  
13 insufficient evidence to support the city's decision to allow  
14 septic tanks on lots of 12-15,000 square feet. There is  
15 nothing in Goal 11 which prohibits outright the use of septic  
16 tanks within an urban growth or urban service boundary, just  
17 because there is a potential in the future for the septic tanks  
18 to fail. Moreover, there was evidence in the record that the  
19 present scheme of monitoring septic tank installations  
20 requiring the approval of the Department of Environmental  
21 Quality is much improved in preventing septic tank failures.  
22 Thus, to the extent the city's argument may be confined to one  
23 of substantial evidence, the Board finds that there was  
24 substantial evidence in the record that use of septic tanks  
25 would not necessarily result in septic tank failures requiring  
26 forced conversion to collective treatment systems in an

1 unplanned manner.

2 Finally, the city's argument is based upon a premise that  
3 may prove to be false - the premise being that the county will,  
4 in fact, approve lot sizes in the 12-15,000 foot range served  
5 only by septic tanks. The issue of adequacy or inadequacy of  
6 septic tanks is more properly to be addressed on a case by case  
7 basis, since many factors such as the size of the drainfield  
8 and quality of the soil have a great bearing on septic tank  
9 adequacy. On the present state of the record we cannot even  
10 speculate as to whether septic tanks will prove inadequate as  
11 the city has alleged.

12 2. Second Assignment of Error - Goal 14

13 Petitioner contends that /U violates Goal 14 first,  
14 because it allows development at urban densities outside the  
15 city, and second, because it allows the creation of non-urban  
16 size lots (12-15,000 square feet) which will not be capable of  
17 conversion to "normal" city size lots (9,000 square feet) upon  
18 extension of public facilities into the area or upon  
19 annexation.

20 Petitioner, however, cites no authority, and we can find  
21 none, for the proposition that land outside a city cannot be  
22 developed at urban densities. The definition of "urban land"  
23 in the goal<sup>4</sup>, however, does allow for the possibility that  
24 urban lands may exist outside city limits. So long as the  
25 decision to develop land to urban densities meets goal  
26 requirements, including Goal 14's conversion standards, there

1 is no prohibition per se on development of land outside city  
2 limits at urban densities. Cf. Homebuilders v. City of  
3 Corvallis, LUBA No. 79-002 (1980)

4 The city's second argument under this assignment is one  
5 which we may not reach because the issue is not ripe for  
6 review. The fact that the county may under /U allow lots to be  
7 created which will not later be capable of conversion to  
8 "normal" city lot sizes does not mean the county will in fact  
9 do so.<sup>5</sup> Moreover, we have no basis for deciding that 12,000  
10 to 15,000 square foot lots are not "normal" city lot sizes for  
11 the Florence area. Accordingly, because the city's second  
12 argument is at present premature and because even if not  
13 premature we have no basis for concluding that 12,000 to 15,000  
14 square foot lots are not "normal" city lots, we find that /U  
15 does not violate Goal 14 for any of the reasons advanced by the  
16 city.

17 3. Third Assignment of Error - Goal 18

18 The city contends that in adopting /U the city made no  
19 findings with respect to beach and dune forms in the area. For  
20 the reasons discussed under the first assignment of error, it  
21 was not necessary for the county to do a Goal 18 analysis in  
22 adopting /U. /U does not purport to satisfy Goal 18's  
23 requirements concerning restrictions on development. Goal 18  
24 must still be applied by the county whenever the facts of a  
25 particular proposed land division so warrant.

26 /////

1           If we had before us in the record facts which showed that  
2 /U had been applied by the county through, for example,  
3 combining /U with RA in an area which was prohibited by Goal 18  
4 from development, we may have some basis for invalidating the  
5 decision to apply /U to that area. However, no such facts  
6 appear from the record and, in any event, the city has chosen  
7 not to appeal the county's ordinance which combined /U with  
8 parent zoning designations within the Florence USB.

9           4. Fourth Assignment of Error - The Subarea Comprehensive Plan

10           The city argues first, that /U violates the subarea plan  
11 because /U allows more intense development than permitted by  
12 the subarea plan in the absence of public facilities. Second,  
13 argues the city, /U encourages development that will likely  
14 resist eventual annexation or connection to public facilities  
15 in violation of the plan.

16           Concerning the first argument the Board finds that the  
17 exception requirements contained in /U meet the requirements of  
18 the subarea plan and will, if adhered to by the county, not  
19 permit development at densities in excess of those permitted by  
20 the subarea plan. The subarea plan, according to the city,  
21 shows a development suitability rating of "severe limitation"  
22 for the entire urban service boundary. The plan recommends  
23 that lands with such a rating or which otherwise have  
24 "unsuitable characteristics" should not be "intensely  
25 developed". Petition for Review, Exh. "B-2" and "B-3."

26           /////

1 "However, the city fails to point out that the subarea plan  
2 does recommend that "most of the anticipated development should  
3 occur" within the Florence USB because this is "where urban  
4 services can be provided."

5 The scheme in /U is to allow development within the  
6 Florence USB based upon septic tank suitability of the soil,  
7 with consideration being given as to the long range sewerage  
8 plan for the area, if any, and considerations as to "later  
9 conversion [of the property] to urban densities in an orderly  
10 and efficient manner." As to this latter consideration Lane  
11 Code sec 10.122-42(2)(d) requires that the proposed division  
12 not "pre-empt the subject property and other properties from:

13 "(i) Later inclusion into community sewerage system;  
14 "(ii) Inclusion into a/the city.  
15 "(iii) The orderly provision of other community  
16 services and facilities."

17 In our view, these considerations which /U requires be made  
18 where community water and sewer are not available insure that  
19 development will not be allowed unless the land is suitable for  
20 the development. As such, it does not impermissibly conflict  
21 with the intent of the subarea plan recommendations.

22 With respect to the city's second argument, the Board  
23 concludes that /U does not encourage development that will  
24 resist eventual annexation or connection to public facilities  
25 in violation of the plan. The city asserts that /U violates  
26 the plan because /U has no provision corresponding to the

1 subarea plan's requirement that "agreement must be reached  
2 (prior to development) with landowners that, when service  
3 becomes available hookup will be made without remonstrance."  
4 Petition for Review, p. 22. While the Board is unable to  
5 locate such a requirement in the portions of the subarea plan  
6 submitted by the city, if such a requirement does exist it  
7 would remain binding on the county whether or not incorporated  
8 into /U. Again, actual land divisions under /U must be based  
9 upon consideration of soil suitability and eventual hook-up to  
10 public sewers. That /U does not itself re-state the subarea  
11 plan's recommendation concerning agreements against  
12 remonstrance does not make the ordinance in violation of the  
13 subarea plan. If the plan's recommendation is, in fact,  
14 binding upon the county, it must be complied with in addition  
15 to the specific requirements in /U.

16 One additional argument made by the city involving the  
17 subarea plan should be discussed briefly. The city states that

18 "One of the purposes of this plan is to minimize the  
19 problems that can be caused by improperly functioning  
20 drainfields. This will be done in at least two ways;  
21 by minimizing use of drainfields in soils with a  
development suitability rating of 4, and by requiring  
low density in many areas." Petition for Review at 22.

22 The city contends that /U neither encourage low density nor  
23 discourages use of drainfields and septic tanks. Nor, however,  
24 does /U as applied in the Florence USB necessarily violate this  
25 plan provision. The plan recognizes the Florence USB is the  
26 place where growth ought to occur. /U in turn provides that if

1 development is to be on septic tanks then it must be of an  
2 intensity which "will not adversely affect other properties by  
3 causing water pollution." Since the subarea plan has at least  
4 two goals in mind - restricting use of septic tanks so as to  
5 reduce problems associated with improperly functioning  
6 drainfields while encouraging development within the Florence  
7 USB - we find that /U seeks to accommodate these goals. /U  
8 does not, in our view, violate the subarea comprehensive plan  
9 by impermissibly encouraging use of drainfields or discouraging  
10 low density.

11 Conclusion

12 The city does not ask that this Board invalidate /U because  
13 it allows development on septic tanks or because it treats a  
14 community sewerage system, as defined by the county, as the  
15 equivalent of a public sewer system.<sup>6</sup> Thus, we do not reach  
16 these issues. The real dispute in this case is a disagreement  
17 between the city and county as to an appropriate interim  
18 minimum lot size. The city has requested that this Board order  
19 the county to establish a minimum lot size of 19,000 square  
20 feet for lots to be served by septic tanks. This would allow,  
21 upon eventual annexation or extension of public facilities,  
22 conversion of these lots to 9,000 square feet, the city's  
23 definition of a "normal" city lot.

24 Even if the Board could go so far as to comply with the  
25 city's request, it is not necessary to do so in this case  
26 because the county may yet agree with the city when it comes

1 time to actually consider land divisions under /U. In any  
2 event, what the appropriate lot size for the city of Florence  
3 USB should be is a matter for the city and county to workout  
4 for themselves, using the statewide goals for guidance.  
5 If agreement cannot be reached it is more appropriate that the  
6 matter be resolved through arbitration by LCDC than by a  
7 judicial process such as would be followed by this Board.

8 For the foregoing reasons, the decision of the county to  
9 adopt Ordinance /U is affirmed.

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FOOTNOTES

1. The written record does not include a copy of this separate ordinance nor any direct reference to its actual adoption. While not part of the written record, the Board may properly consider the fact of its adoption as it bears on the question of whether petitioner has standing. Oregon Laws 1979, ch 772, sec 4(7).
2. Generally speaking, lots of 12-15,000 square feet or less in size would be "urban" size lots. Thus, the creation of such lots from a larger parcel within the USB would constitute the conversion of the land to an urban use and to urban densities.
3. Goal 14 provides, in pertinent part, as follows:

"Land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

  - (1) Orderly, economic provision for public facilities and services;
  - (2) Availability of sufficient land for the various uses to insure choices in the market place;
  - (3) LCDC goals; and,
  - (4) Encouragement of development within urban areas before conversion of urbanizable areas."
4. "Urban Land: Urban areas are those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city..."
5. We question whether /U would allow such lots to be created, however, in view of -42(2)(d) which provides that the county must determine that "The design and operation of the proposed land division or development will allow for later conversion to urban densities in an orderly and efficient manner. . . ."
6. Lane County's counsel defined community sewerage system as: "a sewage facility whether publicly or privately owned which serves more than a single or two-family residence, dwelling or mobile home for the purpose of disposal of domestic waste products."