

BEFORE THE LAND USE BOARD OF APPEALS Nov 14 10 01 AM '80
OF THE STATE OF OREGON

PHILIP THOMPSON,
Petitioner,
and
CARTER STANLEY, MARY STANLEY,
CHARLES S. KENNERLY,
Intervenor-Petitioners)
v.
METROPOLITAN SERVICE
DISTRICT,
Respondent.

LUBA No. 80-081
FINAL OPINION
AND ORDER

Appeal from Washington County.

Petitioner Philip Thompson, Portland, argued the cause and filed the Petition for Review on his own behalf. Participants Carter Stanley and Charles S. Kennerly also argued the cause and filed a response brief on their own behalf.

Thomas Miller, Portland, argued the cause and filed the brief for Respondent Metropolitan Service District.

REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee; participated in the decision.

AFFIRMED 11/14/80

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

1 REYNOLDS, Chief Referee.

2 NATURE OF PROCEEDINGS

3 Petitioner appeals Ordinance No. 80-95 adopted by MSD on
4 June 26, 1980. The purpose of Ordinance No. 80-95

5 "is to implement the Metro Urban Growth Boundary
6 (UGB), and to establish temporary restrictions on
7 certain land therein consistent with policies relating
8 to 'specially protected areas' and to conversion of
9 urbanizable land as approved by the Land Conservation
and Development Commission (LCDC) as conditions upon
the acknowledgement of the UGB under ORS 197.251."
Ordinance 80-95, section (1).

10 Section II of Ordinance No. 80-95 is the "Findings" section
11 which sets forth the reasons and justification for adoption of
12 the ordinance. Section III is entitled "Application and
13 Duration" and states that the ordinance "shall apply to all
14 unincorporated land in Washington County which is within the
15 UGB adopted by Metro in Ordinance No. 79-77. The county shall
16 take no land use related action inconsistent with the terms of
17 this ordinance." The ordinance is to apply until July 1, 1981
18 or until Washington County's Comprehensive Plan is submitted to
19 LCDC for compliance with the statewide goals, which ever occurs
20 first. The ordinance further provides that within six months
21 of the date of its adoption the ordinance shall be placed
22 before the council for its reconsideration and review.

23 Sections V, VI and VII constitute the substantive
24 provisions of Ordinance No. 80-95. Section V sets forth the
25 restrictions on subdivisions and partitions "inside the UGB but
26 outside of specially regulated areas." Subdivisions and

1 partitions may only be allowed if at least one of four stated
2 criteria is met.¹ In essence, the criteria require that
3 connections to public sewer and water be provided concurrent
4 with development, a finding made that topographic or natural
5 constraints on land are such as to make densities at less than
6 10,000 square feet inappropriate and sewer extension
7 impractical in the long term, or the lots to be created be 10
8 acres or larger.

9 Section VI of 80-95 pertains to specially regulated
10 areas.² Where the zoning in a specially regulated area is
11 for residential use, partitions and subdivisions are
12 prohibited. If the zone in the specially regulated area is for
13 commercial or industrial use, then the county may not issue
14 building permits for residential uses. Building permits for
15 non-residential uses (i.e. commercial or industrial uses) can
16 be issued only if "no suitable alternative locations elsewhere
17 within the urban growth boundary outside specially regulated
18 areas" are found to exist.

19 Section VII relates to septic tank permits and limits the
20 county's ability to issue septic tank permits to only those
21 lots which meet one of three conditions: The lot is a
22 preexisting lot and location of the house on the lot will not
23 prevent future urbanization at a density of at least six units
24 an acre; the lot was created as a result of a subdivision or
25 partition approved under Section V of 80-95 in which the
26 subdivision is allowed due to topographic and natural

1 constraints on sewer extensions and lot sizes; or the lot is
2 ten acres or larger in size or has received a lot size variance
3 under Section V and a waiver of the right to remonstrate
4 against future formation of a local improvement district for
5 sewers has been recorded as a deed restriction.

6 Petitioner's Assignments of Error

7 Petitioner's assignments of error, as capsulized in its
8 brief, are as follows:

9 First Assignment of Error: Metro violated Goal 1
10 in that its procedures did not insure the opportunity
11 for citizens to be involved in all phases of the
12 planning process.

13 Second Assignment of Error: Ordinance No. 80-95
14 is a land use action which was adopted by Metro
15 without mail notice to affected citizens in violation
16 of their rights under Washington County's charter and
17 in violation of Goal 1.

18 Third Assignment of Error: The adopted ordinance
19 relies on a policy disallowing non-urban development
20 within the urban growth boundary, rather than
21 encouraging urban development. In so doing, it
22 violated Goal 14.

23 Fourth Assignment of Error: The proposed
24 ordinance violates Goal 10 in that it eliminates one
25 type of housing in Washington County, limits another,
26 does not allow for flexibility of housing location,
type and density and is not needed in order to insure
an adequate supply of buildable lands in the county.

27 Intervenors' Assignment of Error

28 Intervenors contend that Goal 11 is violated because 80-95
29 improperly restricts use of septic tanks as a method of
30 sanitary sewage disposal. Intervenors argue that Washington
31 County's unified sewerage agency master plan is a model of
32 facilities planning. The USA master plan contains both

1 definite plans for certain areas and long range plans for other
2 areas. Because procedures have been codified already in
3 Washington County for approval of septic tanks, septic tanks
4 should be approved as sanitary facilities where only "long
5 range plans" exist. According to intervenors, because 80-95 in
6 Section VII makes no such distinction between where only a long
7 range plan exists as opposed to where definite plans exist, the
8 ordinance violates Goal 11.

9 History of 80-95

10 A thorough review of the history of Metro Ordinance 80-95
11 is necessary in order to understand why 80-95 was adopted and
12 against what standards and criteria its validity is to be
13 measured. On January 2, 1979, the Metropolitan Service
14 District (Metro), the successor to the Columbia Region
15 Association of Governments (CRAG) submitted the Portland Region
16 Urban Growth Boundary to LCDC for acknowledgement. During the
17 next six months, LCDC staff reviewed the boundary, the findings
18 adopted in support thereof, and comments submitted by
19 interested persons.

20 On July 11, 1979, LCDC held its first hearing on the urban
21 growth boundary acknowledgement request. The staff report
22 which was before the commission recommended denial of the
23 acknowledgement primarily for the reason that the urban growth
24 boundary contained approximately 30,000 acres more land than
25 could be demonstrated to be needed under Goal 14 standards by
26 the year 2000. The staff further recommended giving Metro the

1 opportunity to achieve acknowledgement, provided Metro would:

2 "adopt regionwide policies (binding upon all land
3 use actions of member jurisdictions) to prevent
4 premature conversion of urbanizable land to urban uses
5 within the revised boundary. These policies must
6 require that all new development be provided with the
7 full range of urban services at the time of
8 development and specifically preclude low density
9 development (i.e. less than 3 units per net acre) on
10 septic tanks within the revised UGB."

11 On July 18, 1979, LCDC's chairperson sent a letter to Metro
12 confirming LCDC's position on acknowledgement of the regional
13 urban growth boundary. The letter specified that Metro and
14 LCDC staff jointly would work on an acknowledgement order which
15 would, among other things, set forth a policy statement on
16 control of urban sprawl. The letter specifically stated that
17 the policy statement was to be implemented by adoption of
18 conversion policies.

19 At the August 10, 1979, LCDC meeting, the Metro and LCDC
20 staffs submitted a joint memo outlining agreement on five
21 regionwide policies stated as follows:

22 "1. A ten acre minimum lot size for all vacant
23 urbanizable land within the UGB until developed at
24 urban densities.

25 "2. Assurance, through regional policies and the
26 acknowledgement process, that jurisdictions within the
27 UGB will allow for densities compatible with those
28 articulated in the UGB findings.

29 "3. Policies requiring that sewer and water
30 services be in place at the time of development and
31 that new development is consistent with regional
32 transportation planning.

33 "4. As a compliment to "3" above, a prohibition
34 of septic tank development unless it occurs at urban
35 densities (i.e., 3-4 dwelling units per net acre).

1 "5. Policy assurance that future development
2 will occur contiguous with existing urban level
3 development in the region. In order to allow for
4 short run flexibility, new development may be
5 non-contiguous if two conditions are demonstrated
6 through local findings:

7 "a. Insufficient amount of serviced,
8 contiguous land is available to meet short run
9 needs for housing and employment;

10 "b. A non-contiguous development will be
11 consistent with the efficient provision of
12 secondary public facilities, including public
13 transit and schools."

14 On August 23, 1979, apparently working from the five agreed
15 upon regionwide policies, Metro adopted Resolution 79-83. That
16 resolution approved for submittal to LCDC an August 21, 1979,
17 report, entitled "Reply to LCDC Questions Regarding
18 Implementation of the UGB." The resolution further stated as
19 follows:

20 "2. That the policies in Part II labeled Policy
21 Guidelines Numbers 1-4 and those in Part V shown as
22 protective regulation of productive, prime
23 agricultural land shall be used in the review of local
24 comprehensive plans to assure that these or equally
25 strong policies are implemented.

26 "3. That the MSD will utilize its powers under
1977 Oregon Laws, ch 665, sec 17 or 18, to enforce the
policies referenced above in No. 2 or equally strong
policies in the event that a local jurisdiction(s)
does not voluntarily implement them by the dates
specified in the report to LCDC."

 The "Reply to Questions" referred to in the resolution set
forth four policy guidelines for preventing urban sprawl. The
first policy required contiguity of new development with
existing developed areas. Non-contiguous development would be
allowed "if the development is compatible with the efficient

1 provision of public facilities and services." For any
2 jurisdiction which had plans distinguishing between immediate
3 and future urbanizable areas and which prohibited development
4 in future urbanizable areas, the guideline had application only
5 in those areas designated as future urbanizable. In other
6 words, non-contiguous development could occur in areas
7 designated "immediate urbanizable."

8 The second policy in the "Reply to Questions" stated
9 Metro's intent to preserve undeveloped land within the UGB for
10 future urban development. New parcelizations were to be
11 restricted to ten acre minimum lot sizes until provisions in
12 policy guideline No. 3 (see below) were met for residential
13 land or until urban services were assured for commercial and
14 industrial lands.

15 The third policy (policy guideline No. 3) would allow
16 conversion of undeveloped land to residential use only if the
17 development:

18 "(1) Complied with a local plan meeting MSD's
19 density requirements;

20 "(2) Complied with MSD's average residential
21 densities assumed by the Metro UGB findings, unless
the land had unique topographical or natural features;

22 "(3) Sewer and water facilities and services
23 were assured concurrent with final approval of the
proposal."

24 The fourth policy would prohibit development on septic
25 tanks except when:

26 "(1) Septic tanks would be permitted by the
governing body and the Department of Environmental

1 Quality for three or more units per acre, or the
2 septic tanks were for lots of record;

3 "(2) The governing body's plan recognized the
4 land as possessing unique topographic or natural
5 features which made sewer extensions impractical, but
6 the land was nevertheless practical for large lot
7 homesites; or

8 "(3) Septic tanks were recognized in the plan as
9 an interim development measure, the future delivery of
10 sewer services was planned, and the area was under a
11 sewer moratorium with sewage services at least five
12 years away."

13 Further restrictions were that the area be within a
14 sewerage service district, that on site sewage lines capable of
15 future connection to lines had to be installed and local plans
16 had to insure land use intensification (i.e. redevelopment)
17 when the sewerage system became available.

18 The protective regulations in Part V of the "Reply to
19 Questions" prohibited residential development in the
20 agricultural soft areas for ten years. This policy further
21 limited industrial-commercial uses in the agricultural soft
22 areas to a finding that no alternative lands existed within the
23 boundary for the proposed uses.

24 The sum and substance of Resolution 79-83, therefore, was a
25 legally non-binding statement by Metro that it would, if
26 necessary, adopt and enforce conversion policies to protect and
preserve undeveloped land for future development at urban
densities and to assure that development within the urban
growth boundary occurred at urban densities with an urban level
of services.

1 On September 7, 1979, LCDC considered Metro's Resolution
2 79-83 as well as LCDC's own staff report of September 5, 1979,
3 critiquing the Metro resolution. Concerning Policy No. 1
4 relating to contiguous development, LCDC required Metro to
5 retain the requirement contained in the regionwide policies
6 agreed to by Metro and LCDC staff, that before converting
7 non-contiguous land there be a showing that sufficient
8 contiguous land was not available. LCDC further required that
9 the restrictions on non-contiguous development be made
10 applicable to all urbanizable land, that is, land both within
11 and without "immediate urbanizable areas" where so designated
12 in local plans.

13 Metro Policies No. 2 and No. 3 restricting new
14 parcelizations on undeveloped land to ten acres or larger in
15 size and requiring assurances of development at urban densities
16 with an urban level of services were basically approved by
17 LCDC. LCDC, did however, request a more detailed explanation
18 of how the net residential densities and housing mix ratios
19 specified in the Metro UGB would be achieved. LCDC requested
20 that Metro demonstrate the mechanism it would use to achieve
21 these average densities and ratios.

22 Concerning Metro Policy No. 4, the prohibition on septic
23 tank development, LCDC agreed with its staff that the
24 exceptions for allowing septic tanks set forth in the policy
25 might result in little departure from existing practice. Thus,
26 LCDC required that Metro amend its policy to require:

1 (1) Development of septic tanks on lots of record
2 would be allowed only if it could be demonstrated that
3 there would be no substantial adverse impact on
4 regional conversion policies;

5 (2) Metro to review the local governing body's
6 identification of topographic areas for which sewer
7 systems might be deemed to be impractical, thereby
8 allowing development on septic tanks; and

9 (3) Any platting of subdivisions under a sewer
10 moratorium had to be at three units per net acre at a
11 minimum.

12 Of particular significance at this meeting was LCDC's
13 statement that

14 "MSD must fully honor the assurances in MSD
15 Council Resolution No. 79-197 as expeditiously as
16 practicable, but not later than July 1, 1980. If MSD
17 does not appear to be making satisfactory progress on
18 these assurances, the grant of compliance
19 acknowledgement will become void. Such failure would
20 constitute "substantial change in conditions" pursuant
21 to ORS 197.275(2)(a)(b) necessitating appropriate
22 commission action."³

23 On September 28th, LCDC adopted its continuance order which
24 continued the acknowledgement proceedings for 90 days to enable
25 MSD to "conduct further proceedings consistent with this
26 order." The continuance order also applied to three Petitions
27 for Review which had been filed pursuant to ORS 197.300(1)(d)
28 (1979 Replacement Part) which challenged the validity of the
29 Metro UGB. Section III. B. 2. of the order concerned the need
30 for additional urban growth strategies within the UGB and
31 stated:

32 "The drafters of Goal 14 did not contemplate a
33 larger initial urban growth boundary than "needed" for
34 year 2000 growth. See Part II above. The urban
35 growth management strategy set forth by the drafters
36 in the four conversion factors of Goal 14 are not

1 adequate to promote the purposes of Goal 14 with such
2 a boundary. If MSD establishes that it is impossible
3 to draw a year 2000 boundary, it must also adopt
4 strategies in addition to those expressly set forth in
5 the Goal for management of the urbanizable land
6 surplus.

7 "MSD's UGB findings and other submissions contain
8 representation which, if properly implemented, would
9 satisfy the commission as matters of law and policy.
10 In order for this commission to acknowledge the urban
11 growth boundary, MSD must assure the commission that
12 the five issues identified in the Department
13 Memorandum of September 5, 1979, as modified by the
14 commission on September 7, 1979, attached hereto and
15 incorporated herein (see Appendix "F") will be
16 addressed. Policies and map changes to address these
17 issues must:

18 a. Be properly enacted and enforceable, by
19 MSD and other interested persons;

20 b. Be clear and understandable;

21 c. Be consistent and not additional to
22 other urban growth management strategies allowed
23 by the goals. They should not so increase the
24 work of a planning jurisdiction on, for example,
25 a preliminary subdivision plat application, that
26 the time or expense of the application process is
significantly increased.

d. Comply with the Department Memorandum of
September 5, 1979, as modified by the commission
on September 7, 1979, (Appendix "F")."

"With the above findings and additional urban
growth management strategies, MSD could demonstrate
that it will have satisfied the purposes of Goal 14 to
the fullest extent possible. This task is realistic,
sensible, practicable and could be done
expeditiously. Moreover the commission could not
require less, without abandoning its statutory mission
and the purposes of the goals." (emphasis in original)

On November 8, 1979, Metro adopted Ordinance No. 79-77
which amended the urban growth boundary findings in response to
LCDC's concerns. Metro also amended Resolution 79-83 by

1 adopting Resolution 79-102. This latter resolution amended
2 Resolution 79-83 by amending the "Reply to LCDC Questions" as
3 to prohibition of development in agricultural soft areas. The
4 modifiation allowed residential development on lots of record
5 and also specified means whereby exceptions to the flat out
6 prohibition against residential development might be obtained.
7 On November 9, 1979, Metro resubmitted its urban growth
8 boundary with the amended findings for acknowledgement.

9 The LCDC staff analyzed in two memos dated December 10 and
10 December 13, 1979, Metro's attempt to comply with the
11 continuance order. The staff concluded that Metro had done a
12 satisfactory job of complying with the continuance order given
13 Metro's stated intent to comply with the septic tank
14 restrictions contained in the Department's September 5, 1979,
15 memo. The Department felt it could live with Metro's revised
16 policies in the agricultural soft areas provided Goal 3
17 (Agricultural Lands) would remain applicable in these areas.

18 In January of 1980 LCDC issued its order of acknowledgement
19 for the Metro urban growth boundary. Finding number 6
20 contained in the order states as follows:

21 "Metro is committed to continue to utilize the
22 growth management strategies and time tables described
23 in Metro's revised urban growth boundary findings of
24 November 8, 1979 and the policy guidelines in Metro's
25 resolution of August 23, 1979 as amended on November
26 8, 1979."

25 Finding number 7 of the acknowledgement order incorporated by
26 reference "the reasons supporting acknowledgement set forth in

1 the staff reports of December 10 and December 13, 1979" as
2 providing additional justification for acknowledgement of the
3 UGB.

4 In April of 1980, Washington County notified Metro that it
5 would not be able to have its growth management policies
6 adopted by July of 1980. Metro, therefore, proceeded to adopt
7 in ordinance form its own growth management policies for
8 Washington County. Apparently, Washington County was the only
9 one of the three counties which was unable to adopt a growth
10 management policy by July of 1980.

11 Metro proceeded to give widespread notice of its intent to
12 adopt an ordinance regulating conversion of lands within
13 Washington County. Metro conducted hearings in Washington
14 County on Ordinance 80-95. Petitioner Thompson was on a task
15 force formed by Metro and participated extensively in these
16 hearings. As a result of the hearings, the original version of
17 80-95 was altered significantly. While petitioner Thompson was
18 always opposed to the policy of having growth management
19 policies in Washington County, he did state in a letter to
20 Metro that he found the "proposed ordinance to make the best of
21 a bad situation." The ordinance was ultimately adopted in
22 final form by Metro and became effective immediately on June
23 26, 1980.

24 OPINION

25 Before turning to the individual assignments of error it is
26 important to state that Metro's primary if not sole purpose in

1 adopting Ordinance No. 80-95 was to fulfill a condition imposed
2 by LCDC to acknowledgement of Metro's UGB. In order to satisfy
3 the condition imposed by LCDC Metro was required to adopt an
4 ordinance which achieved the specific policy objectives
5 contained in Metro Resolution 79-83, as amended by Metro
6 Resolution 79-102. In order to comply with these policy
7 objectives, referred to as "conversion" policies, Metro had to
8 enact an ordinance which would accomplish the following:

9 (1) Prohibit parcelization of undeveloped land
10 into lots of less than 10 acres, unless development of
11 the land would meet Metro's density requirements
12 (average 6 units per acre) and sewer and water
13 services were assured concurrent with development.
14 The exception to this prohibition was if the land had
15 unique topographical or natural features which would
16 affect ability to extend services or would affect
17 practical minimum lot sizes.

18 (2) Prohibit development on septic tanks,
19 unless: (a) development was at a minimum of three
20 units per acre or was for an existing lot of record,
21 (b) there were topographic or natural features which
22 made a sewerage system impractical, or (c) a sewer
23 moratorium was in effect, septic tanks were recognized
24 in the plan as an interim development measure, and
25 future delivery of sewer service was planned.

26 (3) Prohibit residential development in
agricultural soft areas, except on lots of record,
provided such development complied with Goal 3.

It is with the foregoing in mind that we review the
individual assignments of error presented.

The gravamen of petitioner's first assignment of error is
that although citizens were involved substantially in adopting
Ordinance 80-95, citizens were essentially prevented from
participating in the decisions which Metro made leading up to

1 its committment to adopt an ordinance such as 80-95 in the
2 first place. In other words, petitioner is complaining about
3 the process followed by Metro in adopting Resolutions 79-83 and
4 79-102 which, as previously discussed, played an instrumental
5 role in acknowledgement of the urban growth boundary by LCDC.

6 Whether Metro provided adequate opportunity for citizen
7 involvement in adopting Resolutions 79-83 and 79-102 is not
8 properly an issue in appeal of Ordinance 80-95. For purposes
9 of this case the Board must assume that LCDC's order
10 acknowledging Metro's UGB, including all applicable provisions
11 and conditions contained in the order, is a legally binding and
12 enforceable order of LCDC. The question involved in the
13 validity of Ordinance 80-95 is not whether Metro and LCDC in
14 seeking to work out an acceptable compromise so as to effect
15 acknowledgement of the UGB acted improperly or exceeded their
16 lawful authority. Those questions, if any there be, should
17 have been raised in an appeal of the acknowledgement order. To
18 allow them to be raised in this proceeding is to, in effect,
19 allow a collateral attack on the sum and substance of the
20 acknowledgement order itself.

21 The issues properly involved in this appeal, therefore,
22 involve the procedures followed by Metro subsequent to
23 acknowledgement of the UGB and whether the ordinance complies
24 with applicable legal criteria. The Board does not view
25 petitioner's first assignment of error as attacking the
26 procedures followed by Metro for ensuring citizen involvement

1 subsequent to acknowledgement of the UGB. We, therefore,
2 dismiss this assignment of error.

3 Petitioner's second assignment of error involves an alleged
4 failure on the part of Metro to comply with Goal 1 in that
5 Metro did not "make use of" Washington County's citizen
6 involvement program requiring mailed notice to all property
7 owners affected by the ordinance. Petitioner argues that
8 Washington County's charter requiring mailed notice of
9 impending land use actions to every affected citizen is part
10 and parcel of the county's citizen involvement program.

11 This Board is not convinced that Metro did not "make use
12 of" Washington County's citizen involvement program, at least
13 as intended by Goal 1. Petitioner concedes in his petition
14 that Metro took "elaborate measures...to insure public notice
15 and public input in its hearings concerning Ordinance
16 80-95..." This Board has reviewed the record and finds the
17 following which demonstrates Metro's efforts in this regard:

18 April 3, 1980: First meeting of task force to
19 advise on the formulation of a development control
 ordinance for Washington County.

20 April 9, 1980: Briefing of Washington County
21 Planning Commission.

22 April 16, 1980: Task force meeting.

23 April 17, 1980: Briefing of CPO leaders.

24 April 21, 1980 8:00 a.m.: Briefing of Washington
 County Board of Commissioners.

25 April 21, 1980 7:00 p.m.: Public hearing
26 (Hillsboro). Notice of this hearing to the general
 public was provided in the Oregonian, the Daily

1 Journal of Commerce and the Hillsboro Argus. A notice
2 of public hearing was mailed on April 9th to radio,
3 television and newspaper sources. Notice was
4 additionally provided through newspaper articles
5 appearing in these newspapers. A news release dated
6 April 17th of this hearing and a hearing scheduled for
7 May 22nd in Portland was mailed to over 100 area news
8 sources.

9 April 30, 1980: Task force meeting.

10 May 15, 1980: CPO leaders meeting.

11 May 22, 1980: Public hearing (Portland).
12 (Notice was essentially the same as that given for the
13 April 21st public hearing).

14 June 9, 1980: Meeting of Metro Regional
15 Planning Committee.

16 June 26, 1980: Metro meeting on final adoption
17 of Ordinance 80-95. Public testimony received.

18 The above as well as additional items in the record show
19 that Metro maintained extensive contact with CPO groups in
20 Washington County affected by Ordinance 80-95. Those groups
21 were mailed proposed ordinance revisions and were advised of
22 meetings to discuss the ordinance.

23 Washington County's complete citizen involvement program is
24 not before us in the record. Hence, we cannot determine what
25 might be required in addition to "mailed notice" as provided in
26 Washington County's charter, assuming mailed notice were
construed to be a part of citizen involvement in Washington
County and assuming the mailed notice requirement applied to
the kind of ordinance adopted here.⁴ However, we do believe
that the steps taken by Metro to involve the public in the
process leading up to adoption of Ordinance 80-95 were

1 certainly reasonable. We further believe that any failure to
2 comply with the mailed notice requirement in the county charter
3 is not sufficient, in the context of Goal 1, to give rise to a
4 violation of sufficient magnitude to warrant invalidation of
5 the ordinance. This is particularly so here since the record
6 does not reflect that anyone was harmed in the least as a
7 result of not mailing individual notice of the proposed
8 adoption of Ordinance 80-95. Cf Oregon Laws 1979, ch 772,
9 section 5(4)(a)(B).

10 Petitioner's third assignment of error is that the growth
11 management policies disallow non-urban development within the
12 urban growth boundary rather than encourage urban development,
13 thereby violating Goal 14. Petitioner's main argument here is
14 that Ordinance 80-95 is prohibitive in nature and does not
15 encourage urbanization required by Goal 14. Petitioner argues
16 that Goal 14 encourages higher densities but does not require
17 them and that public demand or preferences should dictate what
18 the densities should be.

19 Petitioner here attacks not so much the specifics of
20 Ordinance 80-95 as he attacks the approach or philosophy
21 contained in the ordinance. Yet this approach or philosophy as
22 well as many of the specifics of the ordinance, were approved
23 and in fact required by LCDC in order that LCDC could
24 acknowledge the Metro UGB as in conformance with Goal 14. To
25 now conclude that the ordinance violates Goal 14 because it
26 discourages development in certain areas or because it tampers

1 with the free play of the market place within the UGB would be
2 to totally upset the acknowledgement applectart.

3 Petitioner argues in his fourth assignment of error, that
4 Ordinance 80-95 violates Goal 10 because it (a) eliminates one
5 type of housing, (b) limits another type of housing, (c) does
6 not allow for flexibility of housing location, type and
7 density, and (d) is not needed to insure an adequate supply of
8 buildable lands in the county. Petitioner argues that
9 Washington County has an adequate supply of buildable lands and
10 that, in fact, there is a surplus of such lands in the county.
11 Ordinance 80-95, according to petitioner, denies flexibility in
12 density in that it allows virtually no development at densities
13 between 10,000 feet and 10 acres, and those which are allowed
14 are limited by topographic constraints. Petitioner further
15 argues that while Metro may be able to contend that in
16 discouraging certain types of housing it is encouraging other
17 types of housing, Metro made no finding to this effect. In
18 fact, petitioner contends Metro erred because it made no
19 findings at all concerning Goal 10 and this was a violation of
20 Goal 2.

21 As with petitioner's Goal 14 argument, petitioner's
22 argument with respect to Goal 10 is too late. First, all Metro
23 Ordinance 80-95 does in our opinion is to implement the
24 commitments made by Metro during acknowledgement concerning
25 conversion policies in Washington County. These commitments
26 were made conditions of acknowledgement by LCDC. LCDC made it

1 clear to Metro that failure on the part of Metro to insure such
2 conversion policies were in place by July 1, 1980 would result
3 in voiding the acknowledgement order.

4 Secondly, the acknowledgement order was quite specific as
5 to what the conversion policies would have to require. In
6 order to be acceptable the conversion policies would have to be
7 consistent with Metro Resolution 79-83 adopted on August 23,
8 1979, as amended on November 8, 1979. The conversion policies
9 contained in Ordinance 80-95 essentially mirror these
10 requirements. While there are language differences and slight
11 variations or clarifications in the actual requirements, we
12 view such changes as necessary in order to achieve the
13 requirement contained in LCDC's Continuance Order of September
14 28, 1979, that the policies be clear and understandable and not
15 significantly increase the time or expense of processing
16 applications for permits.

17 Accordingly, we hold that Goal 10 did not have to be
18 addressed by Metro in adopting Ordinance 80-95. Had Metro in
19 its ordinance added requirements which went substantially
20 beyond the scope of the acknowledgement order our conclusion
21 would probably be different. However, in our view, inasmuch as
22 Ordinance 80-95 only effectuates the conditions contained in
23 the acknowledgement order, which conditions we must presume to
24 be valid, we hold that Ordinance 80-95 did not violate the
25 statewide goals in any of the respects alleged by petitioner.
26 For the reasons expressed above, we similarly conclude that

1 Ordinance 80-95 does not violate Goal 11 as argued by
2 intervenors.

3 Affirmed.

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1 FOOTNOTES

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3 Section V. Subdivision and Partitions

4 A. When consistent with other applicable law, the County
5 may approve subdivisions and partitions inside the UGB but
6 outside of Specially Regulated Areas only when one of the
7 following conditions is met:

8 1. The land is zoned by the County for one of the
9 following: RU-3, RU-4, RU-6, RU-8, RU-10, RU-15, RU-20, RU-30,
10 B-1, B-2A, B-2, B-3, B-4, RD, MA-1, or MA-2; and connections to
11 public sewer and public water systems will be provided
12 concurrent with development.

13 2. Appropriate zoning for the development proposed is not
14 available outside the Urban Growth Boundary; consistent with
15 LCDC Goals #5 (Natural Resources) and #7 (Natural Hazards), the
16 County finds that topographic or other natural constraints are
17 such as to make development at densities of 10,000 square feet
18 or less per unit inappropriate as a planned urban use; and
19 connection to a public sewer and public water systems will be
20 provided concurrent with development;

21 3. Appropriate zoning for the development proposed is not
22 available outside the Urban Growth Boundary; consistent with
23 LCDC Goals #5 (Natural Resources), #7 (Natural Hazards), and
24 #11 (Public Facilities and Services), the County finds that
25 topographic or other natural constraints are such as to make
26 development at densities of 10,000 square feet or less per unit
inappropriate as a planned urban use; and that the topographic
or other natural constraints on land are such as to make sewer
extension impractical in the long-term.

4. All lots in the proposed subdivision or partition are
ten (10) acres or larger, where the lot area is defined in the
manner provided in Article II, Chapter 104 of the Washington
County Community Development Ordinance.

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23 The Board understands "specially regulated areas" to be
24 relatively large, agriculturally productive areas also referred
25 to as "agricultural soft areas" during acknowledgment of the
26 Metro UGB. Presumably LCDC believed these areas should be
protected in large blocks until clearly needed for
development. For this reason, LCDC required as part of the
acknowledgement order that Goal 3 would remain applicable to
these areas notwithstanding their location within the UGB.

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3 We believe the reference in the above quotation to Resolution No. 79-197, instead of 79-83, is a typographical error.

4 The Washington County charter requires individual notice to persons whose land would be required to be rezoned as a result of a comprehensive plan provision or whose land is proposed to be rezoned as a result of adoption of a zoning ordinance. Persons who would be "substantially affected" by reason of a change in the text of a county zoning code must also be mailed individual notice of the proposed ordinance. We are of the opinion that Ordinance 80-95, although not technically a zoning ordinance or a change in the text of the county code, achieves the same purpose as a zoning ordinance in that it restricts the use of certain lands in Washington County. Accordingly, we conclude that Ordinance 80-95 came within the reach of the provisions of the county charter with which the county, had it been the enacting body, would have had to comply.