

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioner appeals Jackson County Ordinance No. 88-8
4 amending the Jackson County Comprehensive Plan and Zoning Map
5 designation for 4.13 acres in an exclusive farm use zone. The
6 amendment applies a Rural Limited Industrial (RLI) designation
7 to the property to allow operation of an asphalt batch plant.

8 FACTS

9 The property is part of a 435 acre tax lot which in turn is
10 part of a cattle ranch of about 4,000 acres. Record 2. The
11 property is presently used for cattle grazing and as an
12 aggregate stockpile site. The property is approximately one
13 and one-half miles from Dead Indian Road and is connected to
14 Dead Indian Road by a private way.

15 There is a quarry located within a mile and one-half of the
16 rezoned property, and rock from the quarry will be used by the
17 proposed asphalt batch plant. The asphalt from the proposed
18 plant is to be used in the Ashland and Talent areas of Jackson
19 County.

20 FIRST ASSIGNMENT OF ERROR

21 "The board improperly approved ordinance 88-8 changing
22 the zoning of the rezoned property from EFU to RLI
without consideration of Goal 14."

23 Petitioner argues the asphalt batch plant is an urban use.
24 Petitioner arrives at this conclusion because the products of
25 the batch plant are to be used primarily to benefit the urban
26 area in and around Ashland. Petitioner argues

1 "the Rezoned Property site would not have been
2 selected for the asphalt batch plant if it were not
3 close to the urban area in which its products will be
primarily used." Petition for Review at 8. (Emphasis
in original.)

4 Petitioner argues that given the urban nature of the use,
5 the county was obliged either to show that its action complied
6 with Statewide Planning Goal 14 (Urbanization) or to take an
7 exception to Goal 14. See 1000 Friends of Oregon v. LCDC
8 (Curry Co.), 301 Or 447, 724 P2d 286 (1986). Because the
9 county failed to show compliance with Goal 14 or take an
10 exception to the goal, petitioner argues the decision must be
11 remanded.

12 The county discounts petitioner's claim that because the
13 products of the use are to be used in an urban area, the use
14 must be considered urban in nature. The county points out farm
15 products, clearly a result of rural uses, frequently are used
16 in urban areas.¹ We understand the county to argue the
17 proposed plant is rural in nature.

18 In addition, the county argues that enactment of the RLI
19 district, and its subsequent acknowledgment by the Land
20 Conservation and Development Commission (LCDC), is sufficient
21 to show compliance with OAR 660-04-022, a rule setting out
22 appropriate reasons to justify an exception to allow industrial
23 development on resource land outside an urban growth
24 boundary.² That is, the county says the proposed zone simply
25 does not allow urban uses, but even if it does allow urban
26 uses, the criteria for an exception to Goal 14 are met by

1 application of the RLI standards.

2 The county order does not characterize the proposed asphalt
3 batch plant as rural or urban. The order, the supporting staff
4 report and the applicant's "exceptions findings" do not discuss
5 the number of employees required to run the plant, its
6 operating characteristics, the level of noise and pollution it
7 may emit, the amount of truck traffic expected to service the
8 plant or other information from which the county or a reviewing
9 body could determine the intensity or nature of the use.

10 We believe the county must make a determination as to
11 whether the use is urban or rural. It is clear from the record
12 that the use includes some operating characteristics which may
13 be urban in nature. Record 27, 31. Without a county
14 determination characterizing the use, we are unable to conclude
15 that it is a rural use. If the use is not rural, its placement
16 outside an urban growth boundary obligates the county to take
17 an exception to Goal 14.

18 The Supreme Court in 1000 Friends of Oregon v. LCDC (Curry
19 Co.), supra, explained the requirements under Goal 14 to
20 convert rural land to urban uses as follows:

21 "Conversion of 'rural land' to 'urban uses' must be
22 supported either by compliance with the requirements
23 of Goal 14 or by an exception to that Goal. * * * In
24 practice, once an objector has charged that a decision
25 affecting 'rural land' outside an urban growth
26 boundary is prohibited by Goal 14, a local government
may do any one of three things: (1) make a record
based on which LCDC enters a finding that the decision
does not offend the goal because it does not in fact
convert 'rural land' to 'urban uses'; (2) comply with
the Goal 14 by obtaining acknowledgment of an urban

1 growth boundary, based on considering [sic] of the
2 factors specified in the Goal; or (3) justify an
exception to the Goal. 301 Or at 477.

3 The county plan recognizes that most industrial development
4 is "urban" in nature and therefore should occur within urban
5 growth boundaries. See Plan p. 518. However, the county's RLI
6 zone allows industrial uses outside an urban growth boundary
7 without expressly requiring that an exception be taken to Goal
8 14 if the use is urban. Under 1000 Friends of Oregon v. LCDC
9 (Curry Co.), supra, this practice is prohibited. See also Loos
10 v. Columbia County, ___ Or LUBA ___ (LUBA No. 87-103, April 1,
11 1988).

12 Neither OAR 660-04-022(3) establishing reasons for an
13 exception from statewide planning goals to allow rural
14 industrial development, nor the RLI designation itself
15 expressly provides an exception from Goal 14 need not be taken
16 to rezone rural property to permit urban type industrial
17 development.³ Indeed, the RLI designation itself indicates
18 that the taking of goal exceptions is anticipated for
19 application of the designation. Jackson County Zoning
20 Ordinance Sec. 237.030(3) and 277.080(1); Jackson County
21 Comprehensive Plan Sec. III(A)(1), p. 53a. Hammack and
22 Associates v. Washington County, ___ Or LUBA ___ (LUBA No.
23 87-037; September 11, 1987) slip op. at 10, aff'd 89 Or App 40
24 (1987).

25 The fact that the RLI designation criteria seem to
26 incorporate some of the acceptable "reasons" for an exception

1 found in OAR 660-04-022(3) does not mean that an exception to
2 Goal 14 is no longer required. We note that the county does
3 not argue that the RLI designation was acknowledged
4 specifically as eliminating any requirement to address Goal 14
5 when properties are designated RLI to allow specific uses. We
6 express no opinion as to whether such a statement in an
7 acknowledgment order or its supporting findings would have the
8 effect of relieving the local government from applying Goal
9 14. But see 1000 Friends of Oregon v. LCDC (Curry Co.), 301 Or
10 at 512.

11 . Because the county did not determine whether the proposed
12 use is urban or rural, and because the nature of the use
13 suggests that indeed it may be urban, we believe the county
14 must either include the site within an urban growth boundary,
15 take an exception to Goal 14 or demonstrate in its decision
16 that the use is rural, not urban. Without such action, we are
17 required to remand the decision. 1000 Friends of Oregon v.
18 LCDC (Curry Co.), supra.

19 The first assignment of error is sustained.

20 SECOND ASSIGNMENT OF ERROR

21 "The board improperly approved ordinance 88-8 changing
22 the zoning of the rezoned property in violation of the
23 RLI designation criteria of the Jackson County
Official Comprehensive Plan."

24 Petitioner advises that the Jackson County Comprehensive
25 Plan (plan) requires an RLI designation "not adversely impact
26 the rural nature of the surrounding region and sensitive fish
Page and wildlife areas." Jackson County Comprehensive Plan, p.

1 53B. Petitioner argues the county board found limitations
2 imposed on siting the proposed plant would mitigate, but not
3 eliminate, all adverse effects on the rural nature of the
4 area. Petitioner believes mitigation is not sufficient. Also,
5 petitioner claims there is insufficient evidence in the record
6 to support the board's finding that damage to Cove Creek would
7 be prevented.

8 Respondent county agrees the plan requires the use to be
9 made compatible with adjacent land uses and not to impact
10 adversely the rural nature of the surrounding uses. However,
11 the county advises its ordinance explains the "no adverse
12 impact" and "compatibility" standards are not absolutes:

13 "Interpretation of Key Terms or Phrases: Except as
14 may be otherwise stated in Oregon Administrative Rules
15 or Statutes, the Jackson County Comprehensive Plan, or
16 its related implementing ordinances, the terms 'no
17 adverse impact or effect,' * * * 'compatible,' 'will
18 not interfere,' and other similar terms contained in
19 standards of this ordinance are not intended to be
20 construed to establish an absolute test of
21 noninterference or adverse effects of any type
22 whatsoever with adjacent uses resulting from a
23 proposed * * * action, nor shall it be construed to
24 shift the burden of proof to the County. The terms
25 are intended to allow the County to consider or
26 require use of mitigating measures which would render
any potential incompatibility or adverse consequences
of development to a minimal level which the County
finds to be acceptable in light of the reasonable
expectations of other people who own or use property
for permitted uses in the zone." Jackson County Land
Development Ordinance Section 00.050.⁴

24 The county argues the performance standards in the RLI zone
25 adequately establish the proposed asphalt batch plant will not
26 "adversely impact" the surrounding area as the term is used in

1 the plan.

2 With respect to petitioner's claim of harm to Cove Creek,
3 respondent cites the applicant's proposal for the proposition
4 that there will be no damage to Cove Creek. However, the
5 portion of the record cited does not mention Cove Creek. It
6 does, however, note there will be no water run-off from
7 operation of the proposed batch plant.

8 The county's finding announcing that adverse impacts of the
9 plant would be mitigated appears to comply with the
10 requirements of its code. We note petitioner does not
11 challenge the specific mitigation measures imposed or explain
12 how they are not effective to mitigate any adverse impacts.
13 The "not adversely impact" RLI application criterion in the
14 plan is not a standard requiring there be absolutely no adverse
15 impacts. Section 00.050 of the ordinance provides clearly that
16 "no adverse impact" is not intended to be an absolute term.⁵

17 As to the Cove Creek issue, petitioner cites us to no
18 evidence in the record suggesting that Cove Creek is impacted
19 by this development. Further, petitioner does not indicate he
20 raised the Cove Creek issue before the county board nor does he
21 explain in his brief why Cove Creek is a "sensitive fish and
22 wildlife area." Petitioner cites evidence about odor from the
23 proposed batch plant and some spillage of water from plant
24 operation, but there is no evidentiary link between this
25 evidence and the existence of an impact on Cove Creek. See
26 Petition for Review 4-5. Without more, petitioner's complaints

1 about damage to Cove Creek are mere speculation. We will not
2 entertain speculative claims. Knight v. City of Coos Bay, 15
3 Or LUBA 122 (1986).

4 The second assignment of error is denied.

5 The county's decision is remanded.

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1 FOOTNOTES

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5 Citing Hammack and Associates, Inc. v. Washington Co., 89
6 Or App 40, ___ P2d ___ (1987), intervenors-respondent Ever
7 Ready Construction Co. and James C. Miller (respondents) argue
8 in addition that an urban use of necessity requires at least
9 public water and sewer facilities. We disagree. Public water
10 and sewer facilities are indicia of commitment to urban levels
11 of development. OAR 660-14-030(3)(c). However, nothing in
12 Hammack suggests that without such facilities a use cannot be
13 urban.

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16 Respondents and petitioner recognize there is no definition
17 of urban use in the Statewide Planning Goals or rules adopted
18 by LCDC.

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21 The RLI Zone includes the following criteria:
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23 "(6) County review of the proposed Rural Limited Industrial
24 (RLI) map designation and uses will be based upon
25 findings that the use will meet all applicable
26 performance standards and at least one of the
27 following criteria:

28 "(A) The proposed use is necessary for the
29 development or efficient utilization of a site
30 specific rural natural resource, and placement
31 of the industrial facility on existing
32 industrially zoned land would create a
33 significant impediment to the development and
34 use of the rural natural resource;

35 "(B) The proposed use will create products, or
36 byproducts, of direct benefit to agricultural or
37 forest uses, or other uses of naturally
38 occurring resources in the same general area,
39 and is more appropriately located outside an
40 urban growth boundary or urban containment
41 boundary.

42 "(C) The proposed use will be hazardous or otherwise

1 not compatible with urban industrial settings
2 under either permitted or conditional uses."
3 Jackson County Land Development Ordinance
4 Section 237.030.

5 Compare these standards with the criteria for a rural
6 industrial exception under OAR 660-04-022:

7 "Reasons Necessary to Justify an Exception under Goal 2,
8 Part II(c). 660-04-022. An exception under Goal 2, Part
9 II(c) can be taken for any use not allowed by the
10 applicable goal(s). The types of reasons that may * * * be
11 used to justify certain types of uses not allowed in
12 resource lands are set forth in the following sections of
13 this rule:

14 * * * * *

15 "(3) Rural Industrial Development: For the siting of
16 industrial development on resource land outside an
17 urban growth boundary, appropriate reasons and facts
18 include but are not limited to the following:

19 "(a) The use is significantly dependent upon a unique
20 resource located on agricultural or forest
21 land. Examples of such resources and resource
22 sites include geothermal wells, mineral or
23 aggregate deposits, water reservoirs, natural
24 features, or river or ocean ports; or

25 "(b) The use cannot be located inside an urban growth
26 boundary due to impacts that are hazardous or
incompatible in densely populated areas or;

27 "(c) The use would have a significant comparative
28 advantage due to its location (e.g., near
29 existing industrial activity, an energy
30 facility, or products available from other rural
31 activities), which would benefit the county
32 economy and cause only minimal loss of
33 productive resource lands. Reasons for such a
34 decision should include a discussion of the lost
35 resource productivity and values in relation to
36 the county's gain from the industrial use, and
37 the specific transportation and resource
38 advantages which support the decision.
39 (Emphasis supplied).

40 * * * * *

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2 Respondents argue that there is nothing in the findings or
3 the evidence to show that adverse affects have not been
4 eliminated. Also, the respondents note there is nothing in the
5 record demonstrating any potential impact on Cove Creek, nor is
6 there any indication that Cove Creek qualifies as a sensitive
7 fish and wildlife area.

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10 We recognize that Section 00.050 is an interpretive section
11 to aid user of the code, not the comprehensive plan. However,
12 petitioner does not argue that the provisions in the zoning
13 ordinance are not, as implementing measures, applicable to
14 interpretation of the plan as well.