BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

STEVE DOOB and BLAIR TUDOR,
Petitioners,

vs.

JOSEPHINE COUNTY,
Respondent,

and

COLVIN OIL COMPANY
Intervenor-Respondent.

LUBA No. 2004-175

FINAL OPINION
AND ORDER

Appeal from Josephine County.

Steve Doob, Merlin, filed the petition for review and argued on his own behalf. Blair Tudor, Grants Pass, represented himself.

No appearance by Josephine County.

Walter L. Cauble, Grants Pass, filed the response brief and argued on behalf of intervenor-respondent.

DAVIES, Board Member; HOLSTUN, Board Chair, participated in the decision. BASSHAM, Board Member, did not participate in the decision.

AFFIRMED 04/01/2005

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

Opinion by Davies.

NATURE OF THE DECISION

Petitioners appeal a county comprehensive plan amendment and zone change from residential to industrial and the county's adoption of an exception to Goal 14.

MOTION TO INTERVENE

Colvin Oil Company (intervenor) moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The subject property consists of four tax lots: tax lot 300 (10.91 acre portion zoned Rural Industrial (RI), 2.17 acre portion zoned Rural Residential 2.5 (RR-2.5)), tax lot 304 (2.64 acres zoned RI), tax lot 2500 (2.27 acre portion zoned RI, .28 acre portion zoned RR-2.5) and tax lot 100 (3.26 acres zoned RR-2.5). *See* diagram below. Tax lot 100, the portion of tax lot 2500 east of Jones Creek Road, and the northeastern portion of tax lot 300 are currently zoned RR-2.5.

In 1998, intervenor filed a similar application to the one at issue in this appeal. The county's decision on that application was appealed to LUBA. *James v. Josephine County*, 35 Or LUBA 493 (1999). We quote the following pertinent description of the facts from that opinion:

> "The subject property is located approximately one mile west of the urban growth boundary for the City of Grants Pass, and lies immediately north of Foothill Boulevard, which runs east-west between the City of Grants Pass and the City of Rogue River. Interstate 5 parallels Foothill Boulevard immediately to the south.
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> "[The eastern portion of tax lot 2500 (south parcel)] is slightly less than one-half acre in size, and fronts Foothill Boulevard at its intersection with Jones Creek Road, which runs north. The south parcel is improved with a gravel surface that currently serves as a parking lot for intervenors' trucks and vehicles. [Tax lot 100 (east parcel)] is north of and adjacent to the south parcel. It is 3.29 acres in size, fronts onto Jones Creek Road, and is improved with a single-family dwelling currently being used as a rental. To the northwest of the east parcel across Jones Creek Road is the [northern portion of tax lot 300 (north parcel)], which is 1.29 acres in size and consists of an open field. * * *
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> "An irrigation canal crosses the area from northwest to southeast, bordering the north parcel on the south, crossing under Jones Creek Road, and bisecting the southern portion of the east parcel. With some exceptions, lands north of the irrigation canal are generally zoned RR 2.5, while lands south of the irrigation canal are zoned RI. Thus, the parcels to the north, northeast and northwest of the subject property are zoned RR 2.5; most are improved with residences. The parcels to the south and west of the subject property are zoned RI, and improved with various industrial and commercial uses, described below. The area to the east of the subject property is zoned Rural Commercial (RC) and developed with a logging operation. The land further to the east of the logging operation is generally zoned for residential uses, with some rural industrial or commercial uses along Foothill Boulevard.
>
> "On a larger scale, the area surrounding the subject property features a corridor running east-west along the Foothill Boulevard/I-5 axis, with the majority of uses immediately bordering the north side of that axis zoned for industrial or commercial uses, but with large areas zoned either for rural residential use or resource use north and south of that corridor. The area including the subject property is served by private wells and individual septic systems; the nearest public water and sewer facilities are approximately one-half mile distant from the subject property.

> "Intervenors own and operate a fuel distribution facility and oil depot on approximately 18 acres of land on the western portion of tax lot 2500 and the southern portion of tax lot 300 where those lots are zoned RI. Intervenors also lease facilities and parking spaces to several other businesses on those lots. Intervenors' facility is the headquarters for one of the largest fuel distribution operations in Southern Oregon, and features oil depots, fueling stations, and an office building with seven employees." *Id*. at 495-97.[1]

The following facts are also relevant to this appeal.

Intervenor sought approval of a limited exception to Statewide Planning Goal 14 (Urbanization), a comprehensive plan map amendment to designate the subject property Committed Urban Exception Area (UEA-C).[2] For the portions of tax lots 300 and 2500 and for tax lot 100, zoned RR-2.5, intervenor sought to amend the comprehensive plan map designation from Residential to Industrial, and a zone change from Rural Residential – 2.5 Acre (RR-2.5) to Rural Industrial (RI). The application identified three separate exception sites as follows: (1) proposed limited exception site 1 (PLES 1) comprised of tax lot 304 and those portions of tax lots 300 and 2500 zoned rural industrial, (2) PLES 2 comprised of the portion of tax lot 300 zoned rural residential, and (3) PLES 3 comprised of tax lot 100 and the portion of tax lot 2500 zoned rural residential. The challenged decision approved the application with conditions, limiting future development to particular identified intensities and types of uses.[3]

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[1] While the 1998 application did not involve all of the property that is included in this application, the description of facts quoted above is equally relevant to this appeal.

[2] The subject property already has acknowledged exceptions to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands).

[3] The challenged decision includes the following condition of approval:

> "20. All development shall occur as shown on the approved site plan maps and plans, and shall be limited as described by the applicant's Limited Exception Proposal, applicant submittal booklet dated February, 2004, pp. 6-8." Record 102.

Intervenor's submittal referenced in Condition 20 and cited in the challenged decision proposes the following limited exception sites:

"1. PLES-1 Tax Lot 300 (main), Tax Lot 304 (all) and Tax Lot 2500 (main)

"This Proposed Limited Exception Site (PLES-1) is to be limited to Colvin Oil Company operations, including the CFN automatic card fuel station, as well as the overnight trailer drop-off as a part of the fueling operation, the UPS leased area, and Ham's Body Shop, as well as those other RI uses similar in nature and intensity of use to the existing uses.

"2. PLES-2 Tax Lot 300 (portion north of Tokay Canal)

"This Proposed Limited Exception Site (PLES-2) is to be limited to Colvin Oil Company operation vehicle and employee vehicle parking.

"3. PLES-3 Tax Lot 100/Tax Lot 2500 (portion east of Jones Creek Road)

"This Proposed Limited Exception Site (PLES-3) shall be limited to truck parking and incidental office and support uses similar to the existing Colvin Oil operation, including overnight truck parking for those vehicles utilizing the Colvin Oil fuel center and Colvin lease operations (such as United Parcel Service center)." Record 9.

The submittal continues:

"It is proposed further that PLES-3 shall be limited to an intensity of use which will:

"-- Have an impact on the PLES-3 less than or equal to the existing Colvin tract uses described above and itemized below, on a pro-rata, per-acre basis as measured by similar use, density, site coverage, traffic generation and development character;

"-- Utilize only rural levels of basic services, such as water, septic, access streets, and fire and police protection, all services to be within the carrying capacity of the land, as defined by RLDC Section 11.030;

"-- Mitigate impacts on the adjoining residential portion of Josephine County Exception Area No. 114-1 with appropriate setbacks, screening and vegetative buffers; and

"-- Mitigate any traffic impacts with appropriate ingress, egress and public street improvements as may be required by traffic increases resulting from the future development of PLES-3, as determined by the Traffic Impact Study (Revised) dated March 25, 2003." Record 554-55 (emphasis in original).

The proposal then details the current levels of intensity of uses on the subject property and outlines the level of intensity of uses to be allowed as follows:

"• Total building area is 5,570 square feet, or 2.17% of the active site area, including septic fields. Therefore, up to 2.17% of the active site area of PLES-3 (2.17% x 3.54 Ac = 3,346 square feet) could be developed as building under this proposal.

"• No Body Shop use is proposed for PLES-3.

On November 11, 2003, the planning commission held a hearing and recommended approval of the proposal. The board of county commissioners conducted several hearings on the matter and, on September 29, 2004, adopted the final written decision.

This appeal followed.

FIRST ASSIGNMENT OF ERROR

Following LUBA's remand of the county's decision in *James v. Josephine County*, the county adopted a comprehensive plan policy creating an overlay plan designation (UEA-C) recognizing lands determined to be "built and committed" to urban levels and allowing "modest expansions of existing developments." Josephine County Comprehensive Plan (JCCP) Goal 10, Policy 1-J, quoted and discussed in detail below. Petitioners argue that the county's decision approving an exception to Goal 14 under that policy is not supported by substantial evidence. Petitioners' argument is based on the premise that in order to obtain a committed exception to Goal 14, intervenor must satisfy the criteria for committed exceptions found at OAR 660-004-0028(2).[4] If petitioners are correct that OAR 660-004-

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> "• Traffic generation rates per acre of 9.5 trips/Ac for the AM peak hour and 7.5 trips/Ac in the PM peak hour. For conservative traffic impact computation purposes, all traffic from PLES-3 shall be deemed truck traffic. (*See* Colvin Oil Company Traffic Impact Study [Revised], Table 2, p. 4, and Discussion, p. 5.) [Record 724-725]. The above employee levels and vehicle use were utilized in the Traffic Impact Study. Development of PLES-3 shall be limited to these intensities of traffic generation. Any further expansion of activities on PLES-1 or PLES-3 must demonstrate adequate traffic capacity, including mitigation measures if required by traffic study.
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> "• The area of Tax Lot 300 west of Tax Lot 304 contains an approved septic field and reserve field, slopes down to Jones Creek and then back up to the Tokay Canal, is developed in more rural fashion with barn, sheds and mobile home, and is therefore unsuitable for expansion of uses that are '*urban in character and intensity*.' Improvements to existing structures or expansion under 10% of existing building area could be accommodated under this proposal." Record 555-56 (emphasis in original).

[4] OAR 660-004-0028 provides, in pertinent part:

> "(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable."

0028(2) provides the applicable criteria for the Goal 14 exception taken by the county, then petitioners are clearly entitled to a remand, because the county did not address those criteria. Instead, the county addressed the criteria at OAR 660-014-0030(3).[5] We turn now to the question of whether the county correctly applied OAR 660-014-0030(3) instead of OAR 660-004-0028.

Petitioners understandably contend that OAR 660-014-0030 does not apply to the challenged decision. In *James*, we declined to apply OAR 660-014-0030. 35 Or LUBA at 504. At that time (and until after the challenged decision was made) OAR 660-014-0030 was titled "Incorporation of New Cities on Rural Lands Irrevocably Committed to Urban Levels of Development." The rule appeared to be aimed only towards the incorporation of new cities. We failed to appreciate that the Oregon Supreme Court had previously interpreted that

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"* * * * *

"(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

"(a) The characteristics of the exception area;

"(b) The characteristics of the adjacent lands;

"(c) The relationship between the exception area and the lands adjacent to it; and

"(d) The other relevant factors set forth in OAR 660-004-0028(6)."

[5] OAR 660-014-0030(3) provides:

"A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

"(a) Size and extent of commercial and industrial uses;

"(b) Location, number and density of residential dwellings;

"(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and

"(d) Parcel sizes and ownership patterns."

rule to apply in circumstances other than the incorporation of new cities. *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 724 P2d 268 (1986). The Court held:

> "We believe OAR [660-014-0030] governs all 'committed' exceptions to Goal 14. While three of its six sections appear to limit it to situations where there is an area 'proposed for incorporation,' the other three speak generally of decisions that land is 'irrevocably committed to urban levels of development.' The latter sections state the general rule for determining commitment and factors to be considered in deciding whether land is 'committed.' Further, the 'purpose' of the rules in Division 14 is not only to provide guidance for incorporation of new cities, but also to 'clarify the requirements of Goal 14' generally. OAR [660-014-0000]. OAR [660-014-0030] is also more specifically tailored to the taking of exceptions to Goal 14 than is the general 'committed' exceptions rule, OAR [660-004-0028]. The former describes factors considered and findings required to determine that land is 'committed to urban development,' * * * while the latter speaks only generally of 'commit[ment] to uses not allowed by the applicable goal' * * * or factors which prevent the 'resource use' of lands." *Id*. at 480-82 (footnotes omitted).

In light of the Supreme Court's decision in *Curry County*, we were mistaken in *James* to find that OAR 660-014-0030 was inapplicable. Furthermore, the rule was recently amended to clarify that it applies beyond the context of incorporation of new cities.[6] Therefore, the county was correct to apply OAR 660-014-0030 instead of 660-004-0028.

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[6] OAR 660-014-0030 currently appears as provided immediately below. The amendments to the rule, however, did not involve subsections (1), (3), and (4), the approval criteria applied by the county below.

> "Rural Lands Irrevocably Committed to Urban Levels of Development
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> "(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.
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> "(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

Petitioners' argument supporting their first assignment of error centers around the impracticability of the uses allowed by Goal 14. Petition for Review 8. Petitioners' argument relies on the applicability of OAR 660-004-0028(1), which requires a demonstration that "uses allowed by the applicable goal [are] impracticable." As discussed above, it is OAR 660-014-0030, not OAR 660-004-0028 that applies here. Although OAR 660-14-0030 does not itself require a demonstration of impracticability, ORS 197.732(1)(b) and *Curry County* impose the requirement that a local government support an exception to Goal 14 by demonstrating that it is "*impracticable to allow any rural uses* in the exception area." *Curry County*, 301 Or at 489.[7] Petitioners' first assignment of error, although urging

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"(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

"(a) Size and extent of commercial and industrial uses;

"(b) Location, number and density of residential dwellings;

"(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and

"(d) Parcel sizes and ownership patterns.

"(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

"(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities."

[7] ORS 197.732(1) provides:

"A local government may adopt an exception to a goal if:

"* * * * *

"(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed

application of the wrong administrative rule, appears to adequately challenge the county's conclusion that it is impracticable to allow rural residential uses on the property. They argue that there are rural residential uses on many of the nearby properties and that there is even a rural residence on the subject property, and that the conclusion that rural residential uses are impracticable on the subject property is unsupported by substantial evidence.

The county's findings are voluminous, and we will not set them forth in their entirety here. Briefly, the county adopted a thorough analysis of the definition of "rural use" from *Curry County*. In *Curry County*, the Court employed the definition of "rural land" in the Statewide Planning Goals. *Id*. at 489. Under that definition, "rural lands" includes "[n]on-urban agricultural, forest or open space lands" and "[o]ther lands suitable for sparse settlement, small farms, or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use." The county in this case studied the residential development in the surrounding area and concluded that residential lots smaller than two acres are "urban levels of development."

Although petitioners appear to disagree with the county's interpretation that residential lots smaller than two acres are considered "urban levels of development," they do not provide a focused legal challenge to that analysis other than to argue that the administrative rule that forms the basis for that interpretation, OAR 660-004-0040(5), did not declare that *existing* parcels less than two acres are necessarily urban.[8] Petition for Review 9-

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> by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable[.]"

[8] OAR 660-004-0040 provides, in part:

> "(5)(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. * * *
>
> "* * * * *
>
> "(6) After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller

10. However, the county, in adopting the interpretation regarding the urban level of development for existing parcels, specifically recognized that the rule itself does not dictate that interpretation:

> "The Board fully understands that the OAR –0040 2-acre rule was not applied retroactively to existing land outside UGBs less than 2 acres in size, and which were thereby 'grandfathered' into their present size and thus retained their developability as 'rural residential lands'. The Board finds that the 'grandfathering', while appropriate to protect existing property rights, did not make lands that were physically defined as 'urban' (less than 2 acres in size) suddenly physically 'rural' in definition (greater than 10 acres in size).
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> "Based upon the clear language of OAR 660-004-0040, and based upon a review of *Curry County* as well as Mr. Snider's experience and analysis, the Board of County Commissioners concludes that to date we may consider residential lots smaller than two areas as 'urban levels of development', lots 10 acres or more in size as 'rural levels of development', and lots between two and 10 acres in size as 'quasi-urban levels of development.'" Record 35 (emphasis in original; citations omitted).

The county concluded that except for the residential areas to the west of the subject property, the surrounding residential development was at "urban levels of development." Record 48. It identified the subject property as "urban in character and intensity of development" and described it as surrounded by "urban levels" of commercial, industrial, and residential development, bordered on the south by I-5. The county concluded that the subject property is impracticable for "sparse settlement, small farms, or acreage homesites" because of the urban levels of development currently on and around the subject property.[9] The

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> minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, Division 014.
>
> "* * * * *
>
> "(7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. * * *"

[9] The county's findings demonstrating compliance with OAR 660-014-0030 address in detail why other rural uses are impracticable as well. However, because petitioners' complaint focuses on the finding that rural residential uses are impracticable, our opinion focuses on that issue as well.

county's conclusion on impracticability is supported by substantial evidence, and petitioners' argument to the contrary does not provide a basis to remand the challenged decision.

Petitioners' first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that the county's decision to designate the property UEA-C violates JCCP Goal 10, Policy (1)J. That policy provides:

> "URBAN EXCEPTION AREAS (UEA). Urban Exception Areas are lands with acknowledged exceptions to Statewide Planning Goals 3, 4, 11 and 14. There are two types of classes of 'urban' exception lands within Josephine County outside of urban growth boundaries: (1) lands that are physically developed or irrevocably committed to urban levels of development (UEA-C); and (2) urban exception areas for which 'reasons' justify allowing new urban development on lands located outside of urban growth boundaries and unincorporated community boundaries (UEA-R).
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> "In general, urban exception areas contain uses or levels of development not typically found in rural Josephine County. The plan policies for UEAs apply to: (1) existing land use developments where a concentration of industrial, commercial, or residential development is built and committed to make the area no longer 'rural'; and (2) valid 'reasons' exceptions to Statewide Planning Goals 3, 4, 11 and 14 to allow new urban development.
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> "The first type of urban exception area consists of lands determined to be 'built and committed' to urban levels or types of land uses existing on April 17, 1998. In UEA-C areas, it is the policy of the county to recognize and allow modest expansions of existing developments rather than to promote additional new urban development. In UEA-C areas, the county does not encourage new urban development that could more appropriately locate and be served inside urban growth boundaries or certain unincorporated community boundaries. However, development on existing vacant lots will be permitted. Where it can be demonstrated that on site water and sewer systems will not exceed carrying capacity, it is the policy of the county to allow additional uses similar in type and density to those already existing in a UEA-C area. The UEA-C designation may be implemented by industrial, commercial, residential or mixed use zones appropriate for and consistent with the types of uses existing in the particular exception area. * * *"

Petitioners direct our attention to the first sentence of the policy: "Urban Exception Areas are lands with acknowledged exceptions to Statewide Planning Goals 3, 4, 11 and 14." According to petitioners, because the property currently only has exceptions to Goals 3 and 4,

the decision violates the policy. In order to satisfy the policy, petitioners argue, prior to consideration of the UEA designation, the lands must also have acknowledged exceptions to Goals 11 (Public Facilities and Services) and 14. With regard to Goal 14, petitioners argue that the exception must be approved and acknowledged prior to the county's entertaining the application for the UEA designation.

Intervenor argues that the county interpreted the policy to allow application for the UEA designation concurrent with the exception proposal. Intervenor-Respondent's Brief 27. Although nothing in the language of the policy specifically permits the UEA designation concurrently with the exceptions, we do not see that the language petitioners rely upon requires the reading they propose. It states only that UEA's are lands with acknowledged statewide planning goal exceptions. The UEA will not be approved unless or until the requisite exceptions are also obtained, but nothing in that language prohibits the county from approving the UEA at the same time it approves the exception to a particular goal. Thus, the fact that it is the challenged decision itself that provides the Goal 14 exception does not violate Policy 1(J).

The policy does seem to require an exception to Goal 11 in order to obtain the UEA-C designation. Intervenor, however, did not request and the county did not grant an exception to Goal 11. In *James*, we sustained the petitioners' assignment of error that the standards for taking an exception to Goal 11 had not been satisfied. We did so, however, because the county expressly adopted such an exception. Although the UEA policy at issue here was not yet adopted, we also stated that we did not see that a Goal 11 exception was required:

> "At the outset, it is not entirely clear to us why the county felt it needed to take an exception to Goal 11. Had the county chosen as a condition of approval to limit uses on the subject property to uses like the proposed use that do not require or impact public facilities, the county might well have concluded that Goal 11 is not applicable or that the proposed plan amendment complies with Goal 11. Be that as it may, the county chose to take an exception to Goal 11, and therefore, pursuant to ORS 197.732(6)(b), we must determine whether the county's findings and reasons demonstrate that the standards for taking an

irrevocably committed exception to Goal 11 have been met." 35 Or LUBA at 502.

The county chose not to require an exception to Goal 11 in this case, presumably because it chose to limit the approved uses to those that do not "require or impact public facilities." The challenged decision states that "the subject property does not have, and is not likely to get in the near future, the urban services of water and sanitary sewer." Record 48. The county further concluded that neither the ongoing operations nor the proposed expansion were dependent upon receiving urban services. Goal 11 is therefore not implicated. *See Citizens for Florence v. City of Florence*, 35 Or LUBA 255 (1998) (Goal 11 applies when a local government redesignates land to allow for more intensive uses that place greater demand on public facilities than uses allowed under an existing designation; Goal 11 is not implicated when a local government redesignates land to allow a shopping center that will place fewer demands on public facilities than the residential uses allowed under the current designation). The county's failure to take an exception to Goal 11 does not provide a basis for reversal or remand.

Petitioners' second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners argue that the county erred in finding that the property has adequate carrying capacity for the proposed comprehensive plan amendment and zone change. Rural Land Development Code (RLDC) 46.040(C) provides in pertinent part:

> "Requests involving changes to the plan and/or zone maps shall demonstrate the land has adequate carrying capacity to support the densities and types of uses allowed by the proposed plan and zone designations. The adequacy of carrying capacity, at a minimum, shall be evaluated using the criteria listed below. * * *
>
> "(1) The proposed density and types of uses can be supported by the facility, service and other applicable development standards contained in this code or contained in other applicable federal, state and local rules and regulations governing such densities and types of uses."

The county found that the carrying capacity of the land was adequate to support the limited uses allowed by the UEA-C overlay, which allows for "modest expansion of existing developments." The county did not address whether the carrying capacity of the land would support all types of uses allowed in industrial designations and zones. Petitioners argue that the county violated RLDC 46.040(C) because it did not address whether the carrying capacity was adequate for *all* types of uses and densities allowed in the proposed zone.

The county interpreted the carrying capacity requirement to require adequate carrying capacity for uses and densities authorized by the decision itself, rather than all possible uses and densities allowed in rural industrial zones. The staff report, which is cited with approval in the challenged decision, states:

> "The basic function of the RPDC is to provide standards that – if met – will assure developed sites support *authorized uses*. * * * In addition to these 'carrying capacity' regulations, the RLDC also provides a process for assuring that other county, state, and federal regulations are also applied." Record 61 (emphasis added; citation omitted).

If this were a garden-variety zone change, we might agree with petitioners because there would be no guarantee that the applicant or future owner of the property might not expand the types of uses or densities beyond those found to be supported by adequate carrying capacity. In the present case, however, the challenged decision does more than merely amend the plan and zone, it also places a UEA-C overlay that restricts the development of the property to the conditions imposed in the decision. Those conditions assure that the types of uses and densities will not exceed the carrying capacity that the county found was currently adequate to support them. The county found that the "land has adequate carrying capacity to support the densities and types of uses" allowed under the challenged decision. Petitioners do not challenge the county's findings that the uses and densities allowed *by the challenged decision* do not exceed the carrying capacity of the land. Therefore petitioners' arguments provide no basis for reversal or remand.

Petitioners' third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioners argue that the county approved a change in plan and zone designation that is inconsistent with the character of the surrounding area. RLDC 46.040(D) provides:

> "The density and types of uses authorized by the proposed plan and zoning designations are appropriate based on the requirements of subsection [1] or [2] below:
>
> "1. The change in designations at the location is consistent with the character of the surrounding area. Consistency shall be demonstrated by a detailed review of the relationship between the area covered by the proposed change in designations and the surrounding area, subject to the following rules.
>
> "a. The detailed review shall describe the similarities or dissimilarities between the area of proposed change and the surrounding area based upon parcel size and ownership patterns, zoning existing or authorized land uses and structures, public facilities and services, and natural or man-made features.
>
> "b. The detailed review shall include a written statement explaining the rationale used to include or exclude areas from study, and be supported by zoning maps, aerial photographs, contour maps, and nay other public or private records, statistics or other documents necessary or helpful to establish the character of the area and show how the change will be consistent.
>
> "2. Demonstrate how the introduction of inconsistent density or uses into an area is justified. * * *" (Footnotes omitted.)

The county based its approval on RLDC 46.040(D)(1). Petitioners challenge the county's decision solely on the ground the types of uses allowed are inconsistent with the character of the 218-acre study area. According to petitioners, because approximately 77% of the land in the study area is residential, amending the plan and zone to industrial must be inconsistent with the surrounding area. The county's decision, however, does not base its approval on consistency with the entire study area, but rather on consistency with an "urban pocket" of commercial, industrial, and residential development. Record 90-92. The county found that intervenor's property was part of an urban pocket developed to urban levels near

an "impact corridor" of industrial and commercial uses related to nearby I-5. The county's decision determined that intervenor's property should be rezoned so that the use would be consistent with the urban levels of industrial and commercial uses within the impact corridor and would provide an appropriate boundary between urban level commercial and industrial uses and adjoining residential uses. Record 90-92.

Petitioners' argument is based solely on a failure of the subject property to be proportionally consistent in types of uses with the entire study area. Petitioners do not explain, however, why RLDC 46.040(D)(1) requires such a strict proportional similarity. We agree with intervenor that there is nothing in the language of the rule that creates a *per se* proportionality requirement with the entire study area. The county provided a detailed analysis supporting its conclusion that the rezoned subject property would be consistent with the urban pocket in the impact corridor. We believe that is sufficient to satisfy RLDC 46.040(D)(1).

Petitioners' fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

Petitioners argue that the decision violates JCCP Goal 10, Policy 1(G)(2). Goal 10, Policy 1 sets out the comprehensive plan map designations and provides a short summary of the uses allowed within those designations. Policy 1(G) describes the Industrial plan designations as follows:

> "INDUSTRIAL (I). Lands for industrial development that range from resource dependent industrial sites to limited areas of light industrial uses recognizing historic land use patterns and existing industrial uses. This designation shall be implemented through the following zones:
>
> (1) Light Industrial – An area intended for industrial uses that has minimal impact on adjoining land uses or public facilities. This zone shall be limited to apply only to existing areas being developed or to an area that is needed for industrial use when it can be demonstrated that the use cannot be located in an urban area.

> (2) Rural Industrial - Areas for industrial use that are located in close proximity to the natural resources on which they rely for raw materials. These uses shall not require full urban services and linkage shall be established to demonstrate that the location is appropriate and necessary for resource utilization."

According to petitioners, because there is no natural resource that is in "close proximity" to or used by intervenor and no evidence that the location is "appropriate and necessary for resource utilization," the challenged decision violates the policy.

Petitioners isolate one aspect of the comprehensive plan that might suggest rural industrial zoning is inappropriate for the subject property without examining the entire text of the comprehensive plan and the implementing code provisions. Intervenor argues that policy 1(G)(2) should not be read to essentially eviscerate the application of the UEA policy, Goal 10, Policy 1(J), to industrial properties, and we agree.

While Policy 1(G)(2) describes the purpose of the rural industrial designation, the local code clearly envisions a broader reading of that language than petitioners propose. RLDC 63 and RLDC 63.1 provide the purposes and permitted uses in the light industrial and rural industrial zones, the zones that implement the industrial plan designations. RLDC 63.110, which provides the purpose of the rural industrial zone, does not limit uses within that zone as petitioners suggest is required under the language of the comprehensive plan. RLDC 63.110.[10] Further, the uses permitted in the RI zone, including a fuel distribution facility, RLDC 63.120(K), make it clear than the RI zone is not limited to industrial uses that are in close proximity to a natural resource.[11]

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[10] RLDC 63.110 provides:

> "The Rural Industrial zone is intended to provide appropriate areas for the development of industrial uses which, by their nature, are essential to a balanced economic base in the county and do not require full urban services. The zone is generally intended to be applied in areas which can provide the limited services necessary or in areas which are already committed to industrial use."

[11] For example, the following uses are permitted in the RI zone: building maintenance services, RLDC 63.120(E); general laboratories and research facilities, RLDC 63.120(L); heavy equipment and farm implement

The subject property has been zoned RI since 1981, and Policy 1(J) provides for modest expansions of existing development, which specifically includes existing *industrial* development. Intervenor has operated an industrial use on the subject property since the early 1970's although the subject property is not in close proximity to a natural resource. As intervenor points out, petitioners' restrictive reading of policy 1(G)(2) would likely prohibit any rural industrial uses from being recognized under the UEA policy as there are very few resource-based industrial uses in the county. The county correctly interpreted the comprehensive plan policies, ordinances and acknowledged zoning by considering them together as a whole and concluding that the UEA-C policy applies to the subject application for modest expansion of the existing industrial use. Accordingly, the challenged decision does not violate the comprehensive plan.

Petitioners' fifth assignment of error is denied.

The county's decision is affirmed.

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sales and repair, RLDC 63.120(M); photographic film processing, photo engraving, photocopying establishments, RLDC 63.120(S); tavern, RLDC 63.120(BB); and tire store, repair and recapping, RLDC 63.120(DD).