



1 COX, Referee.

2 NATURE OF DECISION

3 Petitioner is contesting that portion of the Jefferson  
4 County Comprehensive Plan (unacknowledged) which zoned his  
5 property as Forest Management. Petitioner alleges that an  
6 exception from forest lands to provide for the recreational use  
7 and development of the property should have been taken by  
8 Jefferson County.

9 ALLEGATIONS OF ERROR

10 Petitioner sets forth the following allegations of error:

11 "NON-GOAL VIOLATIONS

- 12 "A. There are insufficient facts in the record to  
13 support the designation of Petitioner's property  
14 Forest Management. The objectives and policies  
15 of the Jefferson County Comprehensive Plan cannot  
16 be achieved by the designation of Petitioner's  
17 property Forest Management.
- 18 "B. The forest management zone adopted by Respondent  
19 violates ORS 215.416(5).

20 "GOAL VIOLATIONS

- 21 "A. Goal 2: Land Use Planning.  
22 Respondent, Jefferson County, did not  
23 take exception from the forest goal in  
24 violation of Goal No. 2.
- 25 "B. Goal 5: Open space, scenic and historic reas,  
26 [sic] and natural resources.  
Respondent, Jefferson County, did not  
plan for the protection of a 'scenic  
area' when they designated Petitioner's  
property forest management. This  
violates Goal No. 5.
- "C. Goal 6: Air, water and land resources quality.  
The designation of Petitioner's  
property forest management threatens  
the water quality of the Metolius River

1 basin in violation of Goal No. 6.

2 "D. Goal 8: Recreational needs.  
3 "Petitioner's property is a site  
4 specific recreational resource.  
5 Failure to identify and preserve this  
6 site violates Goal No. 8.

7 "E. Goal 9: Economy of the State.  
8 "Petitioner's property would improve  
9 the State's economy if it were utilized  
10 for its highest and best use. Failure  
11 to designate the property for  
12 recreational use violates Goal No. 9."

13 FACTS

14 Jefferson County adopted the Jefferson County Comprehensive  
15 Plan and implementing ordinances on March 11, 1981. As part of  
16 the plan the petitioner's 166.4 acre parcel received a Forest  
17 Management zone designation. The property contains ponderosa  
18 pine and two part-time residences. Those part-time residences  
19 appear to have been on the property for more than 30 years.  
20 The subject parcel is located on the Metolius arm of Lake Billy  
21 Chinook. About half of the property that fronts the Metolius  
22 River is located next to the fast water portion of the river.  
23 The other half of the property's frontage is located adjacent  
24 to the slack water of Lake Billy Chinook. The subject property  
25 is approximately 12 miles from the nearest electricity, phone,  
26 or paved road, and is bordered along the majority of its length  
by U. S. Forest Service land. Adjacent to the parcel is a  
small group of part-time residences on the shore of Lake Billy  
Chinook. The area containing those residences has been  
designated as Existing Rural Development (ERD).

1 The Forest Management Zone contains no minimum parcel  
2 size. This lack of parcel size apparently was a reaction to  
3 the fact that over 98 percent of the property zoned FM by  
4 Jefferson County is held in U. S. Forest Service ownership. At  
5 oral argument respondent indicated that since the forest  
6 service ownership would not be subdivided or partitioned, the  
7 county felt there was no need to put a minimum lot size in the  
8 Forest Management Zone standards. Petitioner disagrees and  
9 argues the zone must contain a minimum lot size or means to  
10 determine a minimum lot size.

11 "Section 303 - Forest Management (FM)

12 "Intent: The purpose and intent of the Forest  
13 Management Zone is to provide areas for the continued  
14 practice of timber production, harvesting and related  
15 areas from the hazards of fire, pollution, and the  
16 conflicts of urbanization.

17 "It is also the intent of the zone to preserve  
18 and protect watersheds, wildlife habitats and other  
19 uses associated with the forest, and preserve and  
20 maintain the high positive visual aspect of the forest  
21 area.

22 "In a Forest Zone, the following regulations  
23 shall apply:

24 "A. Uses Permitted Outright: In a Forest Zone, the  
25 following uses and their accessory uses are  
26 permitted outright.

1. Management, production and harvesting of  
forest products, including wood processing  
operations.

2. Quarry, gravel pits, including the crushing,  
screening, or washing of extracted materials  
for use of forest access roads.

"B. Conditional Uses Permitted: In a forest Zone the  
following conditional uses and their accessory

1 uses are permitted when authorized in accordance  
2 with the requirement of Article 6.

3 "1. Heliport.

4 "2. Operations conducted for the exploration,  
5 mining, and processing of aggregate and  
6 other mineral resources of other subsurface  
7 resources, subject to restrictions and  
8 permits of the Department of Geology and  
9 Mineral Industries not in conjunction with a  
10 permitted use.

11 "3. Quarry, gravel pits, surface or subsurface  
12 mining, including the crushing, screening or  
13 washing of extracted minerals not used in  
14 conjunction with a permitted use.

15 "4. Radio or television station, transmitter or  
16 tower; except for those installations used  
17 for the purpose of management of forest land.

18 "5. Refuse disposal area conducted under a land  
19 fill or sanitary fill method.

20 "6. Sewage disposal, water supply facility and  
21 treatment facilities or other public or  
22 semi-public utility or uses.

23 "7. Transmission lines and stations together  
24 with necessary accessory buildings.

25 "8. Private and public parks, playgrounds,  
26 hunting and fishing preserves and  
27 campgrounds, recreational uses and accessory  
28 facilities.

29 "C. Limitations on Use: To carry out the purpose of  
30 the Forest Zone, no provisions have been made for  
31 the construction of dwellings, excepting  
32 buildings which may be accessory to the practice  
33 associated with timber production and harvesting.

34 "D. "Signs: In a Forest zone, the following signs  
35 are permitted.

36 "1. Signs pertaining solely to uses permitted  
37 and conducted within the forest zone and  
38 these signs shall be attached to the ground  
39 of the parcel of land on which such use is

1 conducted. Signs shall, in no case, be  
2 attached directly to trees."

3 DECISION

4 Non-Goal Issues

5 The first non-goal issue raised by petitioner is that  
6 insufficient facts exist in the record to support a designation  
7 of petitioner's property Forest Management. Petitioner argues  
8 the objectives and policies of the Jefferson County  
9 Comprehensive Plan can not be achieved by so designating  
10 petitioner's property. Inherent in petitioner's argument is  
11 that the zoning of the land as Forest Management has foreclosed  
12 the recreational use and development of his property.

13 Petitioner argues that because of the commitment of adjacent  
14 lands to recreational uses such as state park and private  
15 summer homes, his land should be reserved for recreational  
16 development. This argument is treated in more detail in  
17 discussing each of the petitioner's issues relating to the  
18 state-wide goals. We deny petitioner's argument for the  
19 reasons stated within the discussion of each of the individual  
20 goals infra.

21 The second non-goal issue raised by the petitioner is that  
22 the Forest Management Zone adopted by respondent violates ORS  
23 215.416(5).<sup>1</sup> Petitioner argues that the Forest Management  
24 Zone as adopted neither specifies a minimum parcel size nor  
25 sets standards or criteria for a determination of a minimum  
26 parcel size which would allow for future division of his

1 property.

2 The respondent takes the position that partitioning is not  
3 contemplated in the Forest Management Zone and, therefore,  
4 criteria and standards for determining minimum lot sizes are  
5 not necessary.

6 We can not determine from the text of the Forest Management  
7 Zone whether Jefferson County intends to allow private property  
8 zoned Forest Management to be partitioned and if so, the  
9 criteria which will be applied to determine what minimum lot  
10 sizes will be allowed. All other zones in the Jefferson County  
11 Comprehensive Plan set forth minimum lot or parcel sizes  
12 regardless of whether private or public ownership or both is  
13 governed by the zone.

14 As is indicated in the facts section of this opinion, 98  
15 percent of the property in Jefferson County zoned Forest  
16 Management is publicly owned and under the control of the  
17 United States Forest Service. At the time of oral argument,  
18 counsel for Respondent Jefferson County indicated it was the  
19 county's position that no minimum parcel size or means to  
20 calculate one need be set forth in the ordinance since public  
21 lands would not be partitioned. While that may be the intent  
22 of Jefferson County, it is not so stated in the text of the  
23 Forest Management Zone. Furthermore, such an explanation does  
24 not address the fact that 2 percent of the property zoned  
25 Forest Management is owned by private parties who, like  
26 petitioner, may desire to someday partition their land.

1 Property owners have a right to know the standards with  
2 which they must comply in using their land. The text of the  
3 Forest Management Zone does not indicate whether (1)  
4 partitionings will be allowed, (2) private and public property  
5 will be treated differently, and (3) if partitioning is to be  
6 allowed what the minimum lot sizes will be. As is stated in  
7 McQuillin, Municipal Corporations, Vol 8 (Zoning), Section  
8 25.59:

9 "Certainty and definiteness.

10 "As other ordinances, zoning ordinances are  
11 required to be reasonably definite and certain in  
12 terms so that they may be capable of being  
13 understood. The boundaries or limits of zones or  
14 district must be clearly and definitely fixed, and the  
15 restriction on property rights in the several zones  
16 must be declared as a rule of law in the ordinance and  
17 not left to the uncertainty of proof of extrinsic  
18 evidence. The rule of certainty and definiteness of  
19 zoning ordinances verges on or is identical with the  
20 rule that they must establish a clear rule or standard  
21 to operate uniformly and govern their administration,  
22 in order that arbitrariness and discrimination in  
23 administrative interpretation and application be  
24 avoided."

18 Goal Issues

19 Goal 2.

20 Petitioner alleges that Respondent Jefferson County did not  
21 take an exception from the forest goal (Goal 4) in violation of  
22 Statewide Goal No. 2. Petitioner argues that Jefferson  
23 County's failure to take an exception to Goal 4 for  
24 petitioner's land results in a violation of Goal No. 2, Land  
25 Use Planning. Petitioner argues that an exception was taken  
26 from lands described as "Upper Lake Chinook" which are adjacent

1 and contiguous to petitioner's property. Petitioner argues  
2 that an exception to Goal 4 should have been taken for  
3 petitioner's property because the forest designation placed  
4 upon the property also conflicts with Goals 5, 6, 8 and 9  
5 (discussion infra). Petitioner argues that by designating the  
6 land forest, Jefferson County has in effect deprived the  
7 citizens of the State of Oregon of the highest and best use of  
8 a unique site specific recreational resource. Petitioner  
9 claims location of his property on the Metolius arm of Lake  
10 Billy Chinook in Jefferson County makes this property a  
11 recreational resource and recognition as such should have been  
12 given the property by taking a Goal 2 exception. Petitioner  
13 reasons that even though this property is forest land by  
14 definition, the harvesting of the site's timber would result in  
15 aesthetic injury to the property and surrounding area.  
16 Petitioner argues that erosion from harvesting the timber could  
17 result in damage to the Metolius riverbed and destruction of  
18 the site's recreational potential. As a result, argues  
19 petitioner, the future economy of the state could be harmed by  
20 not planning for the proper development of the subject parcel.

21 Jefferson County denies petitioner's allegations. It  
22 argues the record is clear that during the planning process,  
23 Jefferson County considered the nature of the site. It argues  
24 that the county has prepared inventories of the scenic water  
25 quality, wildlife habitat, recreational use, forest use and  
26 economy of the area and matched the plan to the criteria for

1 its zones which resulted in this property meeting the  
2 requirements of the Forest Management Zone. In fact, argues  
3 the respondent, the Forest Management Zone provides the  
4 protection mandated by Statewide Goal No. 4 for this forest  
5 land property.<sup>2</sup>

6 Petitioner does not argue that this property does not meet  
7 the definition of forest lands. Petitioner rather argues that  
8 Respondent Jefferson County had an affirmative duty to take an  
9 exception to Goal 4 so that the property could be used for its  
10 "higher and better use," that being recreational purposes. It  
11 is interesting to note that the petitioner does not indicate  
12 exactly what recreational purposes he contemplates for the  
13 land. Some minimal recreational use is allowed in the Forest  
14 Management Zone, supra. This Board held in Sole v. Lane  
15 County, 1 Or LUBA 186 (1980) (with LCDC concurrence), it is the  
16 petitioner's burden to prove as a matter of law that the land  
17 is not suitable for forest uses. Petitioner must have  
18 introduced evidence before the county to prove as a matter of  
19 law that the land was not suitable for forest uses or that an  
20 exception to the forest land goal should have been granted.  
21 The record is void of any such proof. Therefore, petitioner's  
22 allegation of violation regarding Goal 2 is denied.

23 Goal 5.

24 Petitioner alleges that "Respondent did not plan for the  
25 protection of a 'scenic area' when they [sic] designated  
26 Petitioner's property forest management. This violates Goal

1 No. 5."

2 Petitioner argues that Goal 5 requires respondent to  
3 protect scenic areas. To designate the subject property forest  
4 allows the outright removal of the premises' timber resource  
5 which would in turn aesthetically injure the scenic area,  
6 argues petitioner. Petitioner claims the Jefferson County  
7 Comprehensive Plan identifies the Metolius arm of Lake Billy  
8 Chinook as a scenic area, and the placing of the Forest  
9 Management Zone on the property is in conflict with the  
10 comprehensive plan designation. Petitioner reasons that since  
11 the trees on the subject property are a natural resource and  
12 Goal 5 requires protection of natural resources, any allowance  
13 of the harvesting of this timber does not properly balance Goal  
14 5 against the designation of the property as Forest  
15 Management. Petitioner argues there is no evidence in the  
16 record indicating that respondent addressed the balancing of  
17 need for preserving these natural resources against the value  
18 of the timber.

19 Respondent denies the allegations made by petitioner.  
20 Respondent argues that it has prepared inventories of the  
21 scenic, open space, wildlife habitats and residential impacts  
22 on the Grandview area (of which this parcel is part).  
23 Respondent says that during the planning process it gave  
24 consideration to the different inventories and determined that  
25 it was necessary that petitioner's property be designated  
26 Forest Management. Respondent argues that since this is forest

1 land, the resource goal (Goal 4) governs the property; and, as  
2 such, no balancing against Goal 5 provisions need be shown.  
3 Respondent argues that in determining that Goal 5 is necessary  
4 to protect the trees as a natural resource, respondent would be  
5 prohibited from converting the resource land to something else  
6 without a valid Goal 2 exception. Therefore, respondent  
7 reasons, no matter what Goal 5 says in this situation, Goal 4  
8 controls; and, without a Goal 2 exception to Goal 4, it is  
9 prohibited from dealing with the property in any manner other  
10 than to provide the protections set forth in Goal 4. The  
11 commission agrees with respondent that identification of a Goal  
12 5 resource does not by itself mandate planning the area for  
13 other than a forest use. Deters v. Board of Commissioners of  
14 Clackamas County, 1 Or LUBA 217, 227 (1980). This is not to  
15 say, however, that specific requirements of Goal 5 are not  
16 applicable to the use of the property. For example, if a  
17 wildlife habitat is located on the property, Goal 5 may need to  
18 be addressed. OAR 660-16-000. Accordingly, we deny  
19 petitioner's assignment of error.<sup>3</sup>

20 Goal 6.

21 Petitioner argues that the designation of "Petitioner's  
22 property forest management threatens the water quality of the  
23 Metolius River basin in violation of Goal No. 6."

24 Petitioner argues that in designating the subject property  
25 forest, Jefferson County did not provide for the maintenance  
26 and protection of the Metolius River Basin. Petitioner claims

1 that Goal 6 requires plans to provide buffers where conflicts  
2 in use could result in harmful impact on water resources.

3 Petitioner reasons that since the subject property can be  
4 logged to the river's edge, the Metolius River Basin may be  
5 injured by the possible resulting erosion and runoff.

6 Petitioner concludes that since respondent did not address the  
7 impact along Jefferson County's streams and lakes, Goal 6 has  
8 been violated.

9 Respondent Jefferson County denies petitioner's  
10 allegation. Citing to the fact that Goal 6 is to "maintain and  
11 improve the quality of air, water and land resources of the  
12 state," the county argues Goal 6 does not require specific  
13 findings about buffers where conflicts could result nor does  
14 the goal require specific findings on the impact of logging  
15 along the county streams and lakes. Respondent cites to the  
16 content of the Forest Management Zone and its reference under  
17 conditional uses permitted to Article 6, which is the county's  
18 conditional use ordinance, to support its argument that Goal 6  
19 requirements have been met.<sup>4</sup>

20 Furthermore, respondent relies on the fact that all  
21 forestry activity on petitioner's land will have to be in  
22 compliance with regulations of the Forest Practices Act, ORS  
23 527.610.<sup>5</sup> Respondent points out that the administrative  
24 rules promulgated under ORS 527.610 address the scenic and  
25 water resource related limitations on logging in Oregon.  
26 Citing OAR 629-24-448,<sup>6</sup> respondent argues destruction of

1 scenic and water resources by forest activity on the subject  
2 property is protected against, respondent concludes, therefore,  
3 that Goal 6 has been complied with.

4 We agree with respondent's position and find that  
5 petitioner's allegation regarding Goal 6 shall be denied.

6 Goal 8.

7 Petitioner contends that his "property is a site specific  
8 recreational resource. Failure to identify and preserve this  
9 site violates Goal No. 8."

10 Petitioner claims respondent failed to properly inventory  
11 the recreational opportunities in Jefferson County as required  
12 by Goal No. 8. Petitioner argues that his property is  
13 necessary to satisfy the recreational needs of citizens of the  
14 state and visitors to the state. Petitioner bases his claim on  
15 the property's unique geographic location (where the Metolius  
16 River connects to Lake Billy Chinook). Petitioner claims that  
17 irreparable harm to the site's recreational potential would  
18 occur if the property were logged to the river's edge.

19 Petitioner claims that boating throughout the Deschutes arm,  
20 Crooked River arm, and Metolius arm of Lake Billy Chinook  
21 Reservoir is accessible from the subject property. Petitioner  
22 points to the fact that a state park is situated upstream and  
23 individual summer homes are located downstream. Petitioner  
24 claims fishing, hiking, scenic vistas, hunting, swimming and  
25 boating are all recreational resources to be served by the  
26 property. He reasons that designation of the property forest

1 "denies our citizenry the opportunity to enrich their human  
2 development from this resource." Petitioner summarizes his  
3 argument by saying that Jefferson County erred by not  
4 inventoring said lands for future recreational use and  
5 excepting them from Goal No. 4. He claims that sound  
6 principles of long-range planning "dictate the subject property  
7 be utilizeable for recreation purposes." By not excepting the  
8 subject property, petitioner contends, respondent has failed to  
9 protect land identified for recreational needs in violation of  
10 Goal 8, citing Gruber v. Lincoln County, 2 Or LUBA 180 (1981).

11 Respondent once again relies on the requirements of  
12 Statewide Goal 4 prohibiting the conversion of forest land  
13 without an adequate exception to Goal 2. Respondent claims  
14 that petitioner has not satisfied the burden demanded of a Goal  
15 2 exception and therefore his argument must fail. Citing  
16 portions of the record, respondent claims that Jefferson County  
17 has adequately inventoried the recreational needs of the state  
18 and the recreational uses of the property within its county  
19 borders. Citing to a table in the plan, respondent argues that  
20 the county is well supplied with most recreational facilities,  
21 and the comprehensive plan indicates further projects to  
22 improve recreational needs in the county. Respondent also  
23 points out that the recreational element of the plan and the  
24 fact that the Forest Management Zone allows for recreational  
25 uses do not preclude recreational use of petitioner's land.

26 We find nothing which supports petitioner's argument that

1 there is insufficient amount of land designated recreational in  
2 the comprehensive plan of Jefferson County. Petitioner points  
3 to no evidence to indicate that his property is necessary to  
4 meet the recreational needs of the citizens of the state and  
5 visitors. While the petitioner may very well be correct that  
6 this is, in fact, a unique area or resource, he points to no  
7 evidence in the record that supports his allegation.

8 Petitioner does not present any argument as to what he plans to  
9 do with his property provided it were to be designated  
10 recreational rather than Forest Management. It also should be  
11 noted that a conditional use permitted under the Forest  
12 Management Zone is

13 "Private and public parks, playgrounds, hunting and  
14 fishing preserves and campgrounds, recreational uses  
and accessory facilities."

15 Petitioner does not address that conditional use provision nor  
16 does he indicate how he is prevented from using his property as  
17 a recreational site if indeed it is his desire to do so.

18 Petitioner's reliance on Gruber v. Lincoln County is  
19 misplaced for in Gruber we found that the county had erred by  
20 its failure to protect property it had identified for  
21 recreational needs. As we said:

22 "We do not find that the errors alleged in the  
23 inventory of the recreational properties and needs to  
24 be significant of themselves, but we do find  
25 significant the fact that there is no means evident in  
26 the plan to protect land identified for recreational  
purposes. These [sic] appears nothing to keep a  
willing seller of golf course land and a willing buyer  
of the same from carving up the golf course even  
against the county's wishes. Residences are a

1 permitted use in the RR5 zone and a developer would be  
2 quite within his rights to exercise the permitted use  
3 provision to the destruction of the golf course. The  
4 plan has no provision against such an eventuality." 2  
5 Or LUBA at 189.

6 Petitioner here is not arguing that the respondent has failed  
7 to protect land designated recreational, but rather is arguing  
8 that it failed to designate his property recreational land in  
9 the first place.

10 Based on the foregoing, we deny petitioner's assignment of  
11 error regarding Goal 8.

12 Goal 9.

13 Petitioner argues that his "property would improve the  
14 State's economy if it were utilized for its highest and best  
15 use. Failure to designate the property for recreational use  
16 violates [sic] Goal No. 9."

17 Petitioner argues that Jefferson County relies heavily on  
18 the tourist industry as a resource for economic support. The  
19 tourist industry, contends petitioner, is attracted to  
20 Jefferson County because of its unique natural resources.  
21 Petitioner argues that no land is available for recreational  
22 development on the Metolius arm of Lake Billy Chinook. He  
23 reasons that to provide for the future development potential of  
24 the subject property would help diversify Jefferson County's  
25 economy.

26 Respondent claims the record indicates that Goal 9  
27 requirements to diversify and improve the economy of the state  
28 have not been violated by designating the petitioner's property

1 Forest Management. It notes that its comprehensive plan shows  
2 that the harvesting of ponderosa pine and wood products is an  
3 important part of the county's economy. Petitioner, as  
4 aforementioned, has not indicated what he intends to do with  
5 his property if it were designated for recreational use.  
6 Without more, this Board is unable to agree with petitioner,  
7 especially in light of the fact that the Forest Management Zone  
8 allows as a conditional use development of the property for  
9 some recreational purposes. Petitioner's allegation of error  
10 regarding Goal 9 is denied.

11 For the reasons stated in the section of this opinion  
12 regarding minimum lot sizes, we remand the decision for further  
13 consideration not inconsistent with this opinion.

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FOOTNOTES

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ORS 215.416 provides in pertinent part:

"(1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body.

\* \* \* \* \*

"(5) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole."

We note petitioner cites ORS 215.416 as requiring standards for partitioning. The statutes governing partitioning are found in ORS Chapter 92. We do not enter into analysis of the relationship between chapters 215 and 92.

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Statewide Goal No. 4 defines Forest Land as:

"(1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife, and fisheries habitat, livestock habitat, scenic corridors and recreational use."

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We have incorporated into this opinion, the Land Conservation and Development Commission's recommendation of February 8, 1982 deleting the words "we agree with respondent's argument and", and substituting therein

1 "The commission agrees with respondent that  
2 identification of a Goal 5 resource does not by itself  
3 mandate planning the area for other than a forest  
4 use. Deters v. Board of Commissioners of Clackamas  
5 County, 1 Or LUBA 217, 227 (1980). This is not to  
6 say, however, that specific requirements of Goal 5 are  
7 not applicable to the use of the property. For  
8 example, if a wildlife habitat is located on the  
9 property, Goal 5 may need to be addressed. OAR  
10 660-16-000. Accordingly, we . . ."

11 4

12 Article 6, Conditional Uses, states in pertinent part:

13 "SECTION 601 - AUTHORIZATION TO GRANT OR DENY  
14 CONDITIONAL USES

15 "A conditional use listed in this ordinance shall  
16 be permitted, altered or denied in accordance with the  
17 standards and procedures of this ordinance and this  
18 article by action of the Planning Commission.

19 "In permitting a new conditional use, or  
20 modification of an existing conditional use, may  
21 impose any or all of the standards and requirements  
22 specified by the Ordinance for conditional uses of the  
23 type requested. Upon adoption of findings relating to  
24 the need for additional requirements, the commission  
25 may impose additional conditions which carry out the  
26 purpose and intent of the conditions which are  
specified in Subsection 602-F.

27 "SECTION 602 - STANDARDS FOR GRANTING A CONDITIONAL  
28 USE:

29 "To determine whether a conditional use proposal  
30 shall be approved or denied, the commission shall find  
31 that the following criteria are met, can be met by  
32 observance of conditions, are not able to be met, or  
33 are not applicable.

34 \* \* \*

35 "B. Taking into account location, size, design  
36 and operation characteristics, the proposal  
37 will have a minimal adverse impact on the  
38 (a) livability, (b) value, and (c)  
39 appropriate development of abutting  
40 properties and the surrounding area compared

1 to the impact of development that is  
permitted outright.

2 "C. The location and design of the site and  
3 structures for the proposal will be as  
4 attractive as the nature of the use and its  
setting warrant.

5 "D. The proposal will preserve assets of  
particular interest to the community.

6 " \* \* \*

7 "F. In permitting a new conditional use or the  
8 alteration of an existing conditional use,  
9 the Planning Commission may impose, in  
10 addition to those standards and requirements  
11 expressly specified by this ordinance,  
12 additional conditions which the Planning  
Commission considers necessary to protect  
the best interests of the surrounding area  
or the County as a whole. These conditions  
may include but are not limited to the  
following:

13 " \* \* \*

14 "9. Limiting the manner in which the use is  
15 conducted including restricting the  
16 time an activity may take place and  
17 restraints to minimize such  
environmental effects as noise,  
vibrations, air pollution, glare and  
odor.

18 \* \* \*

19 "SECTION 603 - STANDARDS GOVERNING CONDITIONAL USES:

20 "A conditional use shall comply with the  
21 standards of the zones in which it is located and with  
22 the standards and conditions set forth in this  
subsection.

23 " \* \* \*

24 "D. Mining, quarrying, or other extraction  
25 activity: Extraction of resources may be  
26 allowed as a conditional use when in  
compliance with the following:

1 "1. Plans and specifications submitted to  
2 the Planning Commission for approval  
3 must contain sufficient information to  
4 allow the Planning Commission to  
5 consider and standards pertaining to  
6 the following:

7 \* \* \*

8 "d. The protection of fish and wildlife  
9 habitat and ecological systems  
10 through control of potential air  
11 and water pollutants.

12 "e. The prevention of the collection  
13 and stagnation of water of all  
14 stages of the operation.

15 "f. The rehabilitation of the land upon  
16 termination of the operation."

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5 ORS 527.630 states, in pertinent part, as follows:

19 "(3) To encourage forest practices implementing  
20 the policy of ORS 527.610 to 527.730 and 527.990 and  
21 to provide a mechanism for harmonizing, and helping to  
22 implement and enforce laws and regulations relating to  
23 forest land, it is declared to be in the public  
24 interest to vest in the board authority to develop and  
25 enforce regional rules:

26 "(a) Designed to assure the continuous growing  
and harvesting of forest tree species and to protect  
the soil, air and water resources, including but not  
limited to streams, lakes and estuaries; and

"(b) To achieve coordination among state  
agencies which are concerned with the forest  
environment."

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6 OAR 629-24-448 states:

29 "629-24-448 - Harvesting practices should first be  
30 designed to assure the continuous growing and  
31 harvesting of forest tree species by suitable economic  
32 means and also to protect the soil, air, water, and  
33 wildlife resources:

1 (1) Where major scenic attractions, highways,  
2 recreation areas or other high use areas are located  
3 within or traverse forest land, special consideration  
4 should be given to scenic values by prompt cleanup and  
5 regeneration.

6 (2) Given special consideration toward preserving any  
7 critical wildlife or aquatic habitat or the habitat of  
8 any wildlife or aquatic species classified by the  
9 Department of Fish and Wildlife as being rare or  
10 endangered. Such habitat could be nesting trees used  
11 by large birds of prey.

12 (3) When conducting operations along lakes, bogs,  
13 swamps, wet meadow, springs, seeps, or other sources  
14 where the presence of water is indicated, protect soil  
15 and vegetation from disturbances which would cause  
16 adverse effects on water quality, quantity, and  
17 wildlife and aquatic habitat.

18 (4) Wherever practical, plan clearcutting operations  
19 so that adequate wildlife escape cover is available  
20 within one-quarter mile.

21 (5) Wherever practical, preserve fruit, nut, and berry  
22 producing shrubs and trees."  
23  
24  
25  
26

L JARDON

BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON

FEB 19 11 37 AM '82

JACK EYERLY, )  
Petitioner, )  
v. ) LUBA No. 81-041  
JEFFERSON COUNTY, ) LCDC DETERMINATION  
Respondent. )

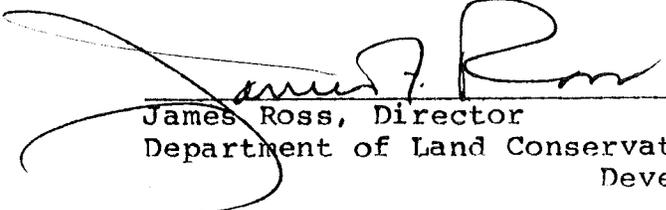
The Land Conservation and Development Commission hereby  
adopts LUBA's recommendation in case No. 81-041 with the  
following amendment:

- 1. On page 9, lines 24 and 25, the words "we agree with respondent's argument and" should be omitted.
- 2. On page 9, on line 25, following the words "Goal 4," the following language should be inserted:

"The commission agrees with respondent that identification of a Goal 5 resource does not by itself mandate planning the area for other than a forest use. Deters v. Board of Commissioners of Clackamas County, 1 Or LUBA 217, 227 (1980). This is not to say, however, that specific requirements of Goal 5 are not applicable to the use of the property. For example, if a wildlife habitat is located on the property, Goal 5 may need to be addressed. OAR 660-16-000. Accordingly, we . . ."

DATED THIS 8th day of February, 1982.

For the Commission:

  
James Ross, Director  
Department of Land Conservation and Development

100 State Office Building  
Salem, Oregon 97310  
Phone 378-4400





## STATE OF OREGON

## INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 1/19/82

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: EYERLY V. JEFFERSON COUNTY  
LUBA NO. 81-041

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

This case involves both goal and non-goal issues. We have only forwarded to you that portion addressing petitioner's assertions regarding Goals 2, 5, 6, 8 and 9. In all cases we deny the assertions.

It should be noted one non-goal issue before us addresses the necessity to have a minimum lot size in a Forest Management Zone. The issue of minimum lot sizes required in forest zones will undoubtedly be addressed by LCDC staff during acknowledgment which is scheduled for April, 1982. We merely point this out to alleviate any confusion which might otherwise arise from reading the "facts" portion of the opinions.

The Board is of the opinion that oral argument would not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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