BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

METROPOLITAN SERVICE DISTRICT,

Petitioner,

vs.

BOARD OF COUNTY COMMISSIONERS FOR WASHINGTON COUNTY, PHILIP THOMPSON, PEARCE O'DOHERTY, CARTER STANLEY and MARY STANLEY,

Respondents.

LUBA NO. 80-034

FINAL OPINION AND ORDER

Appeal from Washington County.

E. Andrew Jordan, Portland, filed a petition for review and argued the caus for Petitioner.

Gregory S. Hathaway, Hillsboro, filed a brief and argued the cause for Respondent County.

Timothy V. Ramis, Portland, filed a brief and argued the cause for Respondents Thompson, O'Doherty and Stanleys and Intervenors Roshak.

Bagg, Referee; Reynolds, Chief Referee; Bagg, Referee; participated in the decision.

Reversed. 9/18/80

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

NOTE: The attached LCDC Determination amends portions of this Final Opinion. Please refer to the attached LCDC Determination for those changes. The LCDC changes control where a conflict is evident with the LUBA Opinion.

BAGG, Referee.

STATEMENT OF THE CASE

This case is about a subdivision of approximately 26.8 acres of property in Washington County. The parcel lies within the acknowledged Metro urban growth boundary. Metro is appealing the subdivision primarily because Metro feels the development may adversely affect housing availability inside the urban growth boundary.

FACTS

The opinion and order of Washington County reveals that the original "Stanley Subdivision" proposal called for 17 lots on 26.8 acres. Record 17. As approved by the county, the project calls for "about" 30 lots of "at least 20,000 square feet each" and a remaining 7.5 acre parcel that will not be developed until a comprehensive plan for sewers for the area is adopted. For the present, only 16 lots will be developed and will be served with septic systems. There will be a deed restriction limiting the location of structures to assure that undeveloped lots will be available for future redevelopment. "The purpose of this condition is to increase the number of homesites to the maximum allowable density when sewers are available to the property." Record 15, 16-17. The county found "that adequate assurance has been given that redevelopment at higher density will be allowed to occur." Record 23. However, the findings do not recite a unit per acre density standard or define terms such as "urban densities," or "higher" density. The findings

show that the County Commission believed this to be a "large lot development" and that a need exists in the county for such large lot developments. Record 21. Part of the justification for the proposal was the County Commission's belief that this project provides "a transition and buffer between rural and urban uses." Record 21.[1]

The initial application was denied by the Washington County Planning Commission in November of 1979, and the applicants appealed that denial to the Board of County Commissioners in December. Record 90-91, 94-95, 98-102. The property is within the acknowledged Metro urban growth boundary, and it is designated as "urban intermediate" in the county comprehensive plan. The comprehensive plan is not acknowledged. It is zoned RS1, a low density suburban residential zoning designation providing for 20,000 square foot minimum lot sizes. The property is also within the unified sewerage agency boundaries.

All urban services exist except for sewer. The area relies on county roads for access, but there is a Tri-Met "park and ride" station 2.2 miles from the property.

PROCEDURAL MATTERS

1. Standing. Standing of the petitioner has been challenged by Respondents and Intervenors on the ground that the petitioner failed to request a rehearing of the County Commissioner's decision. Section 2201-4.9(a) of Article 2 of the Comprehensive Development Ordinance of Washington County

provides:

> "The Board may rehear a matter before it either on its own motion or upon a petition for rehearing submitted within 10 (ten) days of its action by an aggrieved party in the manner provided for by section 2201-4.4 for notices of review provided, however, that no fee need accompany such petition."

Section 2201-4.9(e) provides:

> "2201-4.9(e) The petition for rehearing shall be a jurisdictional requirement for judicial review of final orders pursuant to section 2301."

Respondents and Intervenors say this provision allows "disgruntled parties" a forum to show the County Commissioners an error in a land use decision. Had petitioner used the rehearing proceeding, it would have had the opportunity to raise errors that it now has placed before the Land Use Board of Appeals.

The county urges that we dismiss the petition because of petitioner's failure to avail itself "of a local procedure which could have afforded it relief." Washington County Response Brief, p. 3.[2]

The Doctrine of Exhaustion of Administrative Remedies requires that a party seeking relief have done his best to correct any error made in a lower tribunal before racing to some appellate body. Respondents claim this doctrine applies in this case because of the ordinance provisions cited above. However, petitioner points us to exceptions to the requirement of exhaustion. As noted by petitioner, an aggrieved person is not required to petition for rehearing where the grant of

rehearing is discretionary. Albright v. Employment Appeals Board, 32 Or App 379, 382, 574 P2d 344 (1978) citing Jaffe, The Exhaustion of Administrative Remedies, 12 Buff L Rev 327, 347 (1962). Petitioner asserts Metro did appear before Washington County and complained of the subdivision and on the ground of non-compliance with statewide goals. A rehearing on exactly the same issues, urges petitioner, would not provide an adequate non-judicial remedy. In short, a rehearing even if granted would be futile. The exhaustion doctrine does not require rehearing when the result would be futile. Gilstrap v. Mitchel Bros. Truck Lines, 270 Or 599, 529 P2d 370 cert den, 421 US 1011 (1975).

Even though Section 2201-4.9(e) appears to require a petition for rehearing prior to taking judicial review, it is the Board's view that the requirement may not be used to defeat this Board's jurisdiction. The County Board of Commissioners has prepared a written order with findings and conclusions that appears to satisfy the definition of "final decision or determination" appearing in our rules. (LUBA Rules of Procedures 3(C)), and that appears to be an appealable decision under Oregon Laws 1979, ch 722, sec 3. The fact that the petition for rehearing, even if it must be filed, may be granted or denied by the Board of Commissioners seems to us to make exercising a requirement for rehearing a matter of form and not one of substance. The ordinance provision appears to fall within the exceptions to the exhaustion doctrine noted

above. We do not believe a petition for rehearing was necessary in this case as the grant of the rehearing is discretionary and as the rehearing itself, even if granted, would probably be futile.

We conclude that the petitioners have standing to bring this action.

2. Appearance of Petitioners.

The appearance of Petitioner Metro is challenged. Respondents Thompson, O'Doherty and Stanleys and Intervenors Roshak assert that this appeal was initated without proper authority. The challenge alleges the MSD Executive Director exceeded his authority by initiating the proceeding, and the later attempted ratification by the MSD Board was ineffective because it was done too late.

By the record on file and through affidavits of the parties, we understand the procedural facts to be as follows: A Notice of Intent to Appeal was filed with the Land Use Board of Appeals on April 2, 1980 (Intervenors claim April 1). It apparently was filed on the authority of the Executive Officer alone. The Metro Council specifically authorized the appeal later, on April 24. Thirty days from the time Washington County made the decision would fall on April 18, 1980. As the ratification was on April 24, the Respondents and Intevenors claim the case was filed without authority.

The Executive Officer has duties provided by statute.

"District business shall be administered, and district rules and ordinances shall be enforced, by an executive officer. ORS 268.180(1).

"The executive officer shall present to the council plans, studies and reports prepared for district purposes and may propose to the counsel for adoption such measures as deemed necessary to enforce or carry out the powers and duties of the district or to the efficient administration of the affairs of the district. ORS 268.190(1)."

Respondents and Intervenors urge that the statutes clearly show that the power to initiate a petition with the Land Use Board of Appeals is vested in the council and not the executive officer. According to Respondents and Intervenors, the statutes show that the executive officer has no authority to initiate enforcement on his own other than enforcement of district rules and ordinances. In other words, a subdivision approval by Washington County, though it may lie within Metro's urban growth boundary, is not a matter of enforcement of the urban growth boundary, rather, it must be a matter of enforcement of one of the powers and duties of the district (to adopt urban growth boundaries).

Petitioner points out that LUBA Rules of Procedure 14(B) provides that a party seeking to challenge some failure by an adverse party to comply with the rules of the Board must make his challenge within ten days after the moving party obtains knowledge of the failure. Petitioner says that the motion to hold an evidentiary hearing to introduce evidence showing Metro's filing failed to comply with the statutes concerning authority of the executive officer and the council had to

include some showing that the moving party only learned of Metro's alleged failure on or after the 2nd of June. The motion was filed on June 11.

We note, however, that the authority of a officer of a municipal body to initate an action and the authority of that body itself to initiate an action is a matter of jurisdiction. If, in fact, Metro's director had no authority to appeal the subdivision to LUBA, challenging Metro's appearance in this case would not have to fall within the LUBA 10-day rule. 17 McQuillin, Municipal Corporations, sec 49.33. We will treat the challenge as timely.

We must consider whether the executive officer did, in fact, have authority to file the appeal or whether without that authority, a subsequent ratification by the Metro governing body was effective.

Our reading of ORS 268.180 to ORS 268.190 leads us to conclude that actions such as appeals of local government decisions that in some way adversely affect Metro's interests are matters for council authorization. It is our view that the statutes provide that the executive officer is empowered to administer and enforce only those rules and ordinances adopted by Metro itself. At the time of the filing of this case, Metro had no ordinance that would prohibit the development granted by Washington County and complained of here.[3]

As noted above, the Metro council met on April 24 and attempted to ratify entry of the case before LUBA. Intervenors

and Respondents urge that the unauthorized initiation of legal action may be ratified, but only where that ratification is made before defendants have acquired intervening defenses. Two cases are cited in support of this proposition: Robb v. Voss, 155 US 13, 15 S Ct 4, 39 Lawyer's Ed 52 (1894); and Boyce v. Chemical Plastics, 175 F 2d 839 (8th cir 1949). These cases are cited in Seavey, Handbook of the Law of Agency, sec. 33(6) at page 61 (1964).

Contrary to the assertion of the Intervenors and Respondents, the two cases do not precisely say that the ratification of an otherwise unathorized legal action is not possible after intervening defenses have accrued. The Robb case establishes that ratification of an agent's act may be shown by institution of a legal proceeding to enforce the agent's action, and the Boyce case says that ratification is equivalent to prior authority unless rights of third persons have intervened. The Boyce case was a bankruptcy case where no statute of limitations was provided and no intervening rights of third persons were claimed.

No cases have been cited to us asserting that ratification is not available to an attorney representing a public body, and no cases have been cited to us showing that if a time limit such as the statute of limitations passes from the time the action was started in an unauthorized fashion and the time of its ratification, that the action may be dismissed as never having been filed. Lack of authority to appear in a proceeding

may be ratified. 6 CJS Appearances, sec 9 (1975). Ratification is available to cure unauthorized acts and the ratification will relate back in time to the act of the agent. The exception to that rule is where third party rights such as lienholders have been exercised. In such cases, the ratification may not be used to defeat that right. 19 Am Jur 2d, Corporations, sec 1241, 1242 (1965). We decline to adopt a rule saying that an intervening defense such as a statute of limitations may be used to end this case.[4]

3. Respondents Thompson, O'Doherty and Stanleys and Intervenors Roshak urge dismissal of the case on the ground that MSD allegedly raises matters for the first time on appeal. That is, they say that the appearance by Metro in the proceedings before Washington County did not adequately apprise the county of the issues that Metro now seeks to raise on appeal. In so doing, the county has suffered by not having before it all of the issues claimed by the petitioner so that the county might have an opportunity to cure any defects. In support of this proposition, Intervenors and Respondents cite the Board to Teamsters Local Union No. 670 v. Bd. of Comm. of Hood River County, LCDC No. 78-019, wherein in the Commission found that petitioners had failed to raise a goal 2 argument and went on to say that the commission's review should be limited to "matters brought to the attention of the Board (of Commissioners)."

At page 181 of the Record in this case, there is a letter

to the Washington County Planning Commission from Rick Gustafson, Executive Officer of the Metropolitan Service District. In the letter, Goals 2, 10, 11 and 14 are specifically alleged to have been violated, but the precise nature of the violation is not stated.

The Board believes that these references to particular goals are sufficient to raise matters of Goals 2, 10, 11 and 14. The Commissioners were required under the provisions of ORS ch 197 to apply the Statewide Goals to this subdivision proposal. In so doing, the matter of goal compliance was before them. Indeed, the Board's own order addresses each of the goals the Board felt to be applicable, and includes discussions on Goals 2, 10, 11, 12 and 14. Record 14-39. In short, we believe Metro's presence in the proceedings through the letters sufficiently apprised the county of its need to review comoliance with Goals 2, 10, 11 and 14.

With respect to Goal 12, we note that Metro has not raised an issue of compliance. Nowhere in the correspondence from Metro is their mention of Goal 12. However, that does not mean that petitioner is precluded from challenging compliance with Goal 12.

Although we agree that the County Commission must be afforded the opportunity to correct violations itself and not be subjected to scrutiny on a matter it did not know was at issue, the matter of compliance with the goals is an issue of primary importance in these proceedings. The county is under a

duty to comply with all the goals and a challenge to the county's compliance with the goals should not depend on an assertion of non-compliance below. Goal compliance is not, then, a new issue to the county, but one very much evident in its proceedings. See Marbet v. Portland Gen. Elect., 277 Or 447, 455-457, 561 P2d 154 (1977).

The motions of Respondents and Intervenors are denied.

[This portion of the opinion is modified by the attached and incorporated LCDC Determination. Please refer to the attached LCDC Determination for those changes. The LCDC changes control where a conflict is evident with the LUBA Opinion.]

ASSIGNMENT OF ERROR NO. 1

The first assignment of error alleges that the county violated Goals 10, 11 and 14 "by permitting low density residential development inside and on the fringe of the UGB." Petitioner asserts that the development of the subdivision on the fringe of the UGB, absent some evidence of prior conversion constitutes a "conversion of urbanizable land to urban uses" within the last paragraph of Goal 14. That paragraph lists four factors that must be considered in making such conversion.

> "(1) Orderly, economic provision for public facilities and services;
>
> "(2) Availability of sufficient land for the various uses to insure choices in the market place;
>
> "(3) LCDC goals; and,
>
> "(4) Encouragement of development within urban areas before conversion of urbanizable areas."

Though not precisely stated, it is through these four conversion factors in Goal 14 that petitioner alleges

violations of Goals 10, 11 and 14, and it is through these four factors that we shall examine goal compliance.

Metro alleges that the first requirement quoted above has been violated in that public facilities and services does not contemplate private septic tanks. The Board is cited to City of Lake Oswego v. Clackamas County, LCDC No. 78-031 (1979), at p. 19 for the proposition that privately owned septic systems are not public facilities. Petitioner notes, however, the commission did not conclude that septic tanks were prohibited. They may be appropriate where "low density development is shown to be needed," and in cases where sewers are planned for the area, septic tanks may be allowed only when the need is of a "most urgent nature."

Metro goes on to say that the waiver of remonstrance used by respondents as partial justification for the proposition that sewers will be provided to the area when available are unenforceable. Even if enforceable, Metro says that waivers of remonstrance are no guarantees of increased density. As no increased density is insured and is, in fact, discouraged by provision of septic tanks, the first paragraph quoted above in the conversion factors in Goal 14 has been violated.

The Board does not believe that the City of Lake Oswego case requires sewers. The case provides:

> "Goal 11 and Goal 14 cannot be read to prohibit the use of septic tanks on all lands within the urban growth boundaries. Urban and urbanizable lands include low density development providing a transition

to rural and agricultural areas at the fringes of urban areas." Lake Oswego Recommendation on the Merits at 17.

The Board is unwilling to assert the proposition here that septic tanks as proposed for this development are not appropriate. There is provision for sewers to replace the septic systems if and when the sewer becomes available. Each of the 16 original large lot owners will have to pay for two sewer amendments. It is not as though sewers were being avoided through private septic systems.[5] We view the commission's order in City of Lake Oswego to permit septic systems where the circumstances as a whole show septic tanks to be appropriate and not to damage urban growth patterns.

There remains the assertion that sewers are planned for the area and, therefore, septic tanks are prohibited because there exists no "urgent" need. The county found that sewers were not "programmed" for the area. Record 16-17. We take that to mean that no immediate or short term plan to provide sewers exists. We believe the "plan" referred to in Lake Oswego means a definite plan with timetables included, not a long-range plan that amounts more to a "goal" than a definite plan. So, whether one takes the Tualatin Master Plan to be a "plan" for sewerage to the area or not, this particular subdivision plan seems to satisfy the policies set out in Lake Oswego.

As to the second of the four conversion factors, Metro says that the county has no acknowledged housing plan. With no housing plan showing numbers and sizes of lots, the county at

least had to make findings showing that sufficient land existed within the county to accommodate projected growth needs with this subdivision. It is Metro's position the county had the requirement of showing that displacement of high density development would not occur and the further responsibility of showing the impacts of this particular development on the county's ability to provide its fair share of the region's housing under Goal 10.

We note again that there are no findings as to "urban" or even average density levels in Washington County. Apparently, the county relies on future "redevelopment" and, possibly, high density development in other locations to cure any density related objections to the subdivision. The order simply requires the developer to make available lands for redevelopment within the boundaries of the project. That requirement falls short of a clear requirement to redevelop the property to an urban or average density.

Because the county apparently did not know the average density figure necessary to provide adequate housing within the UGB and also did not know how that average density figure was to be achieved, we find the county lacked sufficient facts to comply with Goal 10. As the Commission said in Seaman, et al v. City of Durham:

> "the burden is upon the planning jurisdiction to show by compelling reasons *** how it has complied with goal 10." Seaman, et al v. City of Durham, LCDC No. 77-025.

In that case the commission went on to

> "emphasize the need for a regional determination of housing need as the basis for the city's [in this case Washington County's] determination as to its fair share responsibility to satisfy the needs of the region and the city [county] itself for low-cost housing." Ibid.

In short, the county has not sustained this burden of showing compliance with Goal 10.

We do not mean to say that a formally adopted housing plan is necessary before a housing development may be approved within the urban growth boundary in Washington County. However, there must be adequate findings by the county to show that the project involved will not inhibit the county's ability to satisfy regional housing needs in the future. We are mindful that this project does provide the opportunity for redevelopment. However, the "opportunity" for redevelopment to a necessarily higher density does not amount to a "requirement" for such redevelopment. It may be that this area of Washington County is best suited for large lot residential development and that "redevelopment" may not be advisable. However, from the findings and facts of this case, we do not feel the county adequately addressed the project's impact on the county's ability to meet regional housing needs.

We find, therefore, that Goal 10 has been violated by the county in its failure to make findings showing its ability to assure compliance with Goal 10's mandate to

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that this proposal violates Goal 14 in the manner asserted here.

The first assignment of error is sustained insofar as it alleges a violation of Goals 10 and 14 as discussed above.

SECOND ASSIGNMENT OF ERROR

The second assignment of error alleges a violation of Goal 12 in that the subdivision was totally reliant on one mode of transportation, the automobile.

Respondent points out that Goal 12 requires transportation plans be based upon transportation needs. Respondent asserts that the transportation needs are those to be served by the automobile simply because of the nature of the area. Respondents and Intervenors add that the roads in the area were found to be adequate to accommodate the traffic, and Metro does not challenge that finding. Also, there is a Tri-Met "park and ride" facility some 2.2 miles away from the subdivision. There is, therefore, at least reasonable access to mass transit.

Goal 12 does require that transportation plans "avoid principle reliance on any one mode of transportation." However, in this case the very nature of the development would appear to require one mode of transportation, the automobile. Mass transit is available relatively nearby, and to disallow the development on the ground that the automobile will be the principal mode of transportation required would be to deny a residential development anywhere not served by mass transit. We are unwilling to accept that proposition at least with the facts presented to us in this case.

> "encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

Similarly, as Goal 10 is included in the second conversion factor in Goal 14, Goal 14 has been violated. Item 3 in the Goal 14 conversion factor list requires goal compliance. We do not understand Metro to be alleging violations of goals other than Goals 2, 10, 11 and 14. As our discussion herein includes analysis of those goals, we will not discuss item 3 on the conversion list as a separate issue.

Item 4 requires encouragement of development within urban areas first. However, we do not see a requirement in the goals that a development which is necessarily semi-urban or semi-rural in character, as recognized in the Lake Oswego case, necessarily must be placed next to an already existing urban area. The county found this kind of development is best suited to location away from an urban area but within the urban growth boundary. If this kind of large lot subdivision is to be allowed at all, it occurs to us that its placement within the urban growth boundary but away from an urban center is certainly possible if not desirable. We note that the record shows the property to be in an area of mixed uses that certainly do not amount to urban density. The general location of the development supports the county's finding that this development can serve as a "buffer between rural and urban uses." Record 16-17, 21. We do not find as a matter of law

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

The third assignment of error alleges a violation of Goal 2 in that the county's findings are insufficient. Goal 2 is the Statewide Goal specifically requiring adequate findings of fact to show compliance with the goals, and Metro's allegation is that the findings are not sufficient to show that the four conversion factors of Goal 14 were considered; that septic tanks within the UGB encourages efficient and orderly use of public facilities; that the development will not cause displacement of higher density housing; and that more than one mode of transportation is encouraged by the development. There is no allegation as to precisely how the findings are deficient; that is, whether they are conclusory, not supported by facts in the record, etc.

Absent a more detailed allegation of error, we are hard pressed to find fault generally with all but the findings relevant to Goal 10 and Goal 14 as it incorporates Goal 10. Further, we believe our discussion above is sufficient to inform the parties of our concerns about the county's findings.

This assignment of error is sustained only insofar as it echos the discussion of Goals 10 and 14, supra.

LETTER OF PHILLIP THOMPSON AND VERN LENTZ

On July 14 the Board received a letter from Phillip Thompson and Vern Lentz that appeared to provide additional argument relative to the merits of the case. From the file of

the case we note that Mr. Lentz is not a party to the case. Mr. Thompson was ably represented by Timothy V. Ramis at the hearing, and no leave was given to any party individually or by and through his attorney for any additional submission of argument. As no provision was made to receive additional argument, it will not be considered.

FOOTNOTES

1

Respondents and Intervenors say that the property will be redeveloped to include an eventual density of 75 housing units on 26.8 acres. It does not appear that the county based its approval of the project on that assumption, and that density level is not mentioned anywhere in the findings.

2

Intervenors Roshak and Respondents Thompson, O'Doherty and Stanley assert the applicability of section 2201-4.9(e), Washington County relies only on sec 2201-4.9(a).

3

Metro apparently later had under consideration an ordinance or resolution that would, if adopted, prevent the type of subdivision at issue here. It is our view that where the specific enforcement duties of an executive officer are provided for in the statute, and that officer's duty may be contrasted with similar duties by another officer or by the governing body, the executive officer's duties should be strictly construed as provided for in the statute. 17 McQuillin, sec 49.33, supra; 2A Sands, Sutherland Statutory Construction, sec 57.14 (4th ed, 1973).

4

We note petitioner's argument that the notice of intent to appeal is simply a notice and that the actual filing of the petition is the appeal itself. We do not concur with that view. The notice of intent to appeal before the Land Use Board of Appeals, like the notice of intent to appeal before the Court of Appeals of the Supreme Court is a document that must be filed by a party or the party's attorney and is a jurisdictional document without which a case may not proceed.

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We find Respondents' and Intervenors' assertions of the validity and enforceability of waivers of remonstrance to be more convincing than Petitioner's arguments as to their invalidity and unenforceability. Even if the waiver does not insure sewer hookup, independent means to enforce sewer hook up does exist in ORS 451.550(2).

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

METROPOLITAN SERVICE DISTRICT, Petitioner(s), v. WASHINGTON COUNTY, Respondent.	)	LUBA 80-034 LCDC Determination

The Land Conservation and Development Commission hereby affirms the LUBA recommendation on the allegations of goal violations as to the second and third assignments of error in LUBA 80-034.

As to the allegations of violations of Goal 10 and Goal 14 in the first assignment of error, the Commission finds a violation of Goal 10 and the conversion factors 1, 2, and 4 of Goal 14 in that:

1) The subdivision approval violates the first conversion factor of Goal 14 by permitting development of septic tanks inside the UGB where no urgent need for development has been shown and were sewers are planned within the long range planning period.

   The Commission finds that septic tanks may be permissible inside an UGB for a very low density area which does not incude sewers and where a need is shown of a most urgent nature which justifies the installation within the long range planning period. See City of Lake Oswego v. Clackamas County, LCDC 78-031.

   The Commission specifically rejects lines 10-12 and 16-23 of page 14 as being inconsistent with this determination.

2) The subdivsion approval violates the second conversion factor of Goal 14 and Goal 10 for the reasons set forth at pages 14-17 of the LUBA recommendations.

3) The subdivision approval violates thr fourth conversion factor of Goal 14 in that the location of this kind of development allows the premature conversion of urbanizable land to an urban use and does not encourage development within urban areas before conversion of urbanizable areas.

The Commission rejects those portions of the LUBA recommendation which are inconsistent with this determination.

DATED THIS 17th DAY OF September, 1980.

W. J. Kvarsten, Director
For the Commission

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