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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

3 DEPARTMENT OF LAND)
 4 CONSERVATION and)
 4 DEVELOPMENT,)
 5)
 5 Petitioner,)
 6)
 6 vs.)
 7)
 7 TILLAMOOK COUNTY BOARD OF)
 8 COMMISSIONERS, and)
 8 WILLAMETTE UNIVERSITY,)
 9)
 9 Respondents,)
 10)
 10 and)
 11)
 11 REAL ESTATE LOAN FUND,)
 12)
 12 Amicus Curiae.)

LUBA No. 81-004
FINAL OPINION
AND ORDER

13 Appeal from Tillamook County.

14
15 Mary J. Deits, Assistant Attorney General, Salem, filed the
16 Petition for Review and argued the cause on behalf of
17 Petitioner.

18
19 Warren McMinimee, Tillamook, filed the brief and argued the
20 cause on behalf of Respondent Tillamook County.

21
22 Daniel A. Ritter and Kris J. Gorsuch, Salem, filed the
23 brief and argued the cause on behalf of Respondent Willamette
24 University.

25
26 Edward J. Sullivan, Portland, filed the brief for Amicus
Curiae Real Estate Loan Fund.

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

23 REMANDED 6/30/81

24
25 You are entitled to judicial review of this Order.
26 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772,, sec 6(a).

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioner, Department of Land Conservation and
4 Development, appeals Tillamook County's approval of a Goal 3
5 exception and zone change from A-1 to A1-PD for a 38 acre
6 parcel located five miles south of the City of Tillamook.
7 Petitioner alleges the decision violates statewide planning
8 Goals 2, 3, 11 and 14. Petitioner's argument concerning Goals
9 2 and 3 is that a proper Goal 2 exception was not taken to Goal
10 3 in that the county failed to properly address the "need" and
11 "alternative sites" criteria of the Goal 2 exception process.
12 Goal 11 was violated, according to petitioner, because the
13 county failed to properly determine what the level of public
14 facilities and services needed to serve this development would
15 be and because the county failed to determine that this level
16 of public facilities and services would be appropriate for but
17 limited to the needs of the rural area. Petitioner's Goal 14
18 argument is that the proposed use is an urban use located
19 outside an urban growth boundary.

20 STATEMENT OF FACTS

21 The parcel of land in question is located approximately
22 five miles from the Tillamook Urban Growth Boundary, adjacent
23 to Highway 101 on the west. The parcel is 38 acres in size and
24 is located in an area described by the county as a general mix
25 of residential, commercial and agricultural uses. Twenty-five
26 parcels within one quarter mile of the property are five acres

1 or less in size. However, the county also found that
2 approximately 50% of the parcels in the surrounding area are
3 over twenty acres in size.

4 Although the parcel predominately consists of Class II
5 agricultural soil and has been used in the past for grazing and
6 limited hay production, the county found that development of
7 the property with 46 housing units (primarily mobile homes)
8 would be consistent with Tillamook County's goal of "preserving
9 actively producing resource lands." This finding was due to
10 the parcel's limited agricultural potential, as testified to by
11 a soil scientist, its isolation from other productive farm land
12 and the existence of nearby rural residential parcels.

13 Because the parcel consists of agricultural land as defined
14 in Goal 3, the county followed the procedure in Goal 2 for
15 taking an exception to Goal 3.¹ The county determined that
16 there was a need for more rural homesites, including mobile
17 homesites, in the county and that this parcel satisfied that
18 need. Specifically, the county found (1) there is "pressure"
19 for more rural homesites in Tillamook County; (2) 4 to 6
20 percent of the people who live in the county, including the
21 City of Tillamook, indicated a "preference" to live in a mobile
22 home, and (3) there is inadequate housing generally in the
23 county and an inadequate number of subdivisions providing
24 manufactured housing opportunities.² Concerning alternative
25 locations for the proposed development, the county found (1) no
26 other planned developments are presently proposed in

1 non-coastal Tillamook County, and (2) only two available sites
2 for mobile homes exist between this proposal and the Tillamook
3 city limits because zoning, sewage, and flood problems rule out
4 other possible sites.

5 The county also identified public facilities and services
6 to be provided to this development, including fire and police
7 protection, electric and telephone service, schools and water.
8 The county stated that the providers of these services had been
9 contacted about providing or extending services to the
10 development. Nothing is stated in the findings, however,
11 concerning the results of these "contacts."

12 OPINION

13 Petitioner's first assignment of error is that the county's
14 findings concerning "need" and "alternative sites" were not
15 supported by facts and findings compelling the conclusion that
16 these criteria had been satisfied.

17 The requirements of Goal 2, Part II, Exceptions, have been
18 summarized by LCDC and the Court of Appeals as (1) need, (2)
19 alternatives, (3) consequences and (4) compatibility. See:
20 LCDC Publication, Common Questions About the Exceptions Process
21 (1979); Still v Marion County, 42 Or App 115, 600 P2d 433
22 (1979).

23 The first issue is whether "need" is a proper shortcut term
24 for "why these other uses should be provided for" in the
25 exceptions process. Respondent Tillamook County and amicus
26 argue that need is not a proper shortcut. They assert one need

1 only show that a use not allowed by the particular goal (here
2 Goal 3) must be allowed in order to meet the requirements of
3 one or more of the other goals (here, Goal 10). Amicus is
4 careful to say that just because a use forbidden by one goal
5 may further the purposes of another goal is not sufficient to
6 compel the result that the forbidden use ought to be allowed:

7 "However, it is important to note that the
8 provisions of statewide planning goals do not
9 automatically mandate exceptions to other statewide
10 planning goals. In other words, compelling facts and
11 reasons in support of 'why these other uses should be
12 provided for' are not established merely by reciting
13 provisions of another statewide planning goal which
14 advocate a use of the land other than that required by
15 the goal from which an exception is being taken. See
16 LCDC, 'CREST Review Goal Interpretation Issues,'
17 adopted April 30, 1981, Issue No. 1.

18 "For instance, Goal 9 (Economy of The State)
19 requires local governments to designate sites suitable
20 for economic growth and expansion (i.e., industrial
21 and commercial uses) in their plans. If a county
22 proposed to designate rural agricultural land for
23 industrial uses not allowed in an exclusive farm use
24 zone, thus requiring an exception, Goal 2, Part II(a)
25 would not be satisfied by merely reciting that Goal 9
26 advocates using land for industrial purposes. The
27 county would have to make findings supported by
28 substantial evidence (e.g., economic surveys,
29 employment statistics, population projections, etc.)
30 explaining why the proposed rural industrial use was
31 necessary to meet Goal 9's purpose of diversifying and
32 improving its economy and why the proposed use
33 required a rural location (e.g., that it will use a
34 unique site-specific resource). See also, Department
35 of Economic Development 'Economic Development Planning
36 For Rural And Resource Lands Through The Comprehensive
37 Plan and Ordinances,' revised July 28, 1980, pages
38 15-16." Amicus, pp. 6-7.

39 In summary, according to amicus at least, a jurisdiction must
40 show "why the proposed...use was necessary to meet [the goals']
41 purpose and why the proposed use required a rural location."

1 To us, the foregoing is simply a more elaborate way of
2 saying why the proposed use is needed in order to achieve the
3 purposes of the goals. We fail to see how LCDC's shortcut does
4 undue violence to the meaning and intent of Goal 2.

5 What must be shown to satisfy the "need" requirement of
6 Goal 2 is a more sticky problem. DLCD takes the following
7 position:

8 "In order to allow residential development
9 outside an urban growth boundary it must be determined
10 that the rural resource land location of the proposed
11 residential development is necessary to satisfy the
12 housing needs generated by the location of rural
13 industrial, commercial or other economic activities in
14 this area."³

15 Amicus does not disagree with the test employed by DLCD,
16 but argues that this test is not exclusive. Amicus argues that
17 need can also be satisfied if it can be shown that the demand
18 for housing in an area cannot be met by land within the UGB
19 because of limitations on sewer, water facilities, etc. In
20 other words, rural land may be used for urban housing needs if
21 the urban area (i.e., the land within the UGB) cannot
22 accommodate the urban housing needs.

23 Amicus argues another acceptable basis for showing need
24 would be to meet Goal 10's requirement that plans "allow for
25 flexibility of housing location, type and density." Amicus
26 argues that because small acreage rural homesites are desired
by thousands of Oregonians, are not "expressly prohibited by
any provisions of the statewide planning goals," and are not
allowed within the UGB, the small acreage rural homesites must

1 be provided for in a county's plan in order to meet Goal 10.

2 We need not address in this case whether rural land may be
3 used for urban housing needs because there is no demonstration
4 in this case the urban housing needs cannot be met on lands
5 located within one or more urban growth boundaries. We also
6 need not answer whether Goal 10's requirement that plans "allow
7 for flexibility of housing location, type and density" can be
8 used as a basis to justify housing (including mobile homes) in
9 rural resource lands.⁴ Even if we were to embrace such a
10 position there would first, at a minimum, have to be a showing
11 that the need for rural residential housing could not be
12 satisfied on whatever rural, non-resource land may exist within
13 the county. The county made no finding in this case as to
14 whether rural, non-resource land exists in the county to
15 satisfy the need for rural residential housing.

16 Concerning the "alternative sites," requirement of Goal 2,
17 Part II, Exceptions, petitioner argues the findings are
18 inadequate to show no alternative sites exist for the proposed
19 development. With respect to alternative sites, the county
20 appears to have broken the issue into two parts: (1)
21 alternative sites for rural residential housing generally, and
22 (2) alternative sites for mobile homes.

23 Concerning alternative sites for housing generally, the
24 county found there were no other planned developments within
25 the non-coastal portion of Tillamook County. We do not
26 understand, however, why this is material as to the

1 availability of alternatives to the 38 acre parcel involved in
2 this appeal. In any event, this finding certainly does not, as
3 Goal 2 requires, compel a reasonable person to conclude there
4 are no alternative sites for rural residential housing.

5 As for alternative sites for mobile homes, petitioner notes
6 the findings themselves state there are two other available
7 sites between this proposed development and the Tillamook city
8 limits which could be used for mobile homes. Yet, there is no
9 explanation as to why these sites are not adequate to meet
10 whatever need might be established for mobile homes. The
11 county's statement about zoning, sewage and flood problems
12 ruling out other sites is, according to petitioner, not
13 explained and the basis for this conclusion is not set out.

14 We agree with petitioner's assertion that the county has
15 failed to adequately address the "alternative sites"
16 requirement of Goal 2, Part II, Exceptions. Assuming Tillamook
17 County had justified the necessity to look outside the urban
18 growth boundary to provide housing for central county
19 residents, the county did not explain why this 38 acre site was
20 the best site. As petitioner stated:

21 "The county's findings do not tell us what they
22 found the facts to be. The specific sites which the
23 county believed to be alternatives are not even
24 identified. Further, the county does not give any
25 reasons why the two available sites between the
26 proposed development and the Tillamook city limits are
not suitable. Finally, the county states that there
are other possible sites, but that zoning, sewage and
flood problems rule out these sites. Again, the sites
are not identified and the reasons why zoning, sewage
and flood problems rule out these sites are not

1 explained. The county's inadequate findings do not
2 allow this Board to determine if a reasonable person
3 would be compelled to conclude that there are no
4 reasonable alternative sites." Petition for Review at
5 13.

6 For the foregoing reasons, we conclude that Tillamook
7 County's attempt to take a Goal 2 exception to Goal 3 and to
8 change its comprehensive plan so as to allow the proposed
9 development failed to meet the requirements of Goal 2 relating
10 to "need" and "alternatives." This matter must, therefore, be
11 remanded to Tillamook County for further proceedings consistent
12 with this opinion.⁵
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1 COX, Referee, Specially Concurring.

2 While I concur in the outcome of this case, I do not agree
3 with the majority in its use of the word "need" as a short cut
4 term for that portion of Statewide Goal 2 which requires a
5 showing of "why these other uses should be provided for." The
6 use of the term "need" misleads all of us who attempt to apply
7 the standard. It is an amorphous word which has been misused
8 in land planning efforts.⁶ For the same reasons that I
9 disagree with the continuation of the use of "need" as a
10 shortcut term under Goal 2, I believe it is extremely
11 unfortunate the word has been used in Statewide Goal 10, and it
12 should be either defined or its use discontinued. (Statewide
13 Goal No. 10 has as its purpose "to provide for the housing
14 needs of citizens of the state.")

15 What is meant when "need" is used in land use activities?
16 Does its use in the Statewide Goals call for a policy
17 statement, which in turn is reviewed for arbitrariness. See
18 Neuberger v. City of Portland, 288 Or 155, 603 P2d 771 (1979).
19 Or, is it to be used as an objective standard to which local
20 governments must comply and that compliance reviewed in terms
21 of substantial evidence?

22 The Oregon Supreme Court stated in Marbet v. Portland Gen.
23 Elect., 277 Or 447, 469, 561 P2d 154 (1977), referring to ORS
24 469.060 et seq. "* * * need is a conclusion that involves
25 policy judgment." If "need" as used in Goals 2 and 10 refers
26 to policy judgment, then LCDC, this Board and the courts have

1 been reviewing compliance with those goals improperly.
2 Traditionally, a determination of "need" has been reviewed for
3 the existence of findings supported by substantial evidence and
4 not by the less stringent standard of arbitrariness. (See
5 Still v. Marion County, 42 Or App 115, 600 P2d 433 (1979), rev
6 den 288 Or 493 (1980).

7 If "need" refers to an objective standard which calls for
8 substantial evidence review, then LCDC should indicate the type
9 of need the goals contemplate. I requested that the parties to
10 this case define what "need" meant in the context of this
11 case. Their supplemental briefs indicate, by their diverse
12 explanations, that the word offers no guidance for either
13 planning or review of land use actions.

14 The Psychologist A. H. Maslow in 1943 wrote an article
15 which not only sheds some light on why the term "need," as used
16 in the context of land planning, has created so much confusion
17 but may assist in solving some of the problems which have
18 arisen out of its use. According to Maslow, "need" refers
19 ultimately to a means of describing human motivation. In his
20 article "A Theory of Human Motivation" he classified human
21 motivation as a heirarchy of needs.⁷ Maslow concluded there
22 are five categories of human needs.⁸ He stated that the five
23 needs are related to one another, being arranged in an
24 heirarchy of predominance, meaning that when a lower level need
25 is fairly well satisfied, the next higher need emerges to
26 dominate a person's conscious life and to serve to motivate

1 that person's behavior. Once gratified a need is not an active
2 motivator.

3 In summary, Maslow defined these needs as follows:

4 Physiological needs are the primary needs for
5 food, shelter, and clothing and must be satisfied
6 before the individual can consider higher-order
7 needs. Hunger in this context is not equated to
8 appetite but rather to sheer life and death hunger.
9 Once the physiological needs are at least partially
10 satisfied, other needs come into the picture.

11 Safety needs include protection from physical
12 harm, the need for job security, and avoidance of the
13 unexpected.

14 Social needs: the desire to be accepted by
15 members of the family and other individuals and
16 groups.

17 Esteem needs are more difficult to satisfy. At
18 this level is the need to feel a sense of
19 accomplishment, achievement and respect from others.

20 Self-actualization need--This is the need for
21 fulfillment, for realizing one's own potential, to use
22 one's talents and capabilities totally."

23 By applying Maslow's theories we can see that depending
24 upon which "need" is being referred to, the standard to be
25 applied in reviewing whether someone has met Goal 2 or Goal 10
26 will vary. Using his theory to analyze Goal 10's language, we
27 can see why the use of the word "need" has lead to confusion.
28 Does the goal require that local jurisdictions provide for
29 housing to meet physiological needs such as basic survival type
30 shelter? If physiological needs are what the goal refers to
31 then presumably all that is contemplated for housing in Oregon
32 is multi-family efficiency units which provide the basics of
33 shelter. A person does not need, in the physiological sense, a

1 home on a five acre parcel for shelter, anymore than does a
2 person need a mink coat for warmth. The five acre parcel and
3 the mink coat represent desires, wants, trappings of success,
4 aids in creating a particular lifestyle, all much higher on
5 Maslow's heirarchy than physiological needs.

6 The requirement in Goal 10 that land use plans

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

10 would seem, however, to indicate the goal is referring to
11 esteem and self-actualization needs rather than physiological
12 needs. If "need" is to be described in terms of esteem or
13 self-actualization then the desires of Oregon's citizens, as
14 measured by market demand for housing types and locations, must
15 be satisfied. The Court of Appeals stated, however, in Still
16 v. Marion County, 42 Or App 115, 122 (1979), that market demand
17 is not a measurement of need. The court stated:

18 "A market demand for rural residential
19 development, however, does not constitute a 'need' for
it, as that word is used in Goal No. 2."

20 What definition of need, ala Maslow, was the Still court using
21 when it made that statement? How else besides market demand
22 can we measure "need" if its use refers to Maslow's esteem or
23 self-actualization categories? The Still decision doesn't
24 answer the question. If anything, it confuses the issue when
25 it states at 42 Or App 122:

26

1 "A determination of whether this land is needed
2 for residences should be made in accordance with Goal
3 #10, housing, which mandates that local governments
4 should designate sufficient suitable land within the
5 urban growth boundary to meet residential needs."
6 (Emphasis added).

7
8 To what kind of residential "needs" is the court referring,
9 physiological, esteem, self actualization?

10 Usually, a land use proposal is presented in terms of
11 esteem or self-actualization needs but is evaluated using
12 methods which do not measure those type of needs. For example,
13 a county commission may propose to allow five acre rural
14 homesites in response to its local constituents who desire a
15 lifestyle not available within an urban growth boundary on
16 5,000 to 10,000 square foot lots. As a result of holdings such
17 as that of the Court of Appeals in Still, supra, however, those
18 esteem or self-actualization needs can not be satisfied because
19 the county's ability to show substantial evidence support for
20 them has been severely limited, if not eliminated, since
21 "market demand" is not considered a valid measurement of "need."

22 As a result, the proposal which originally was a reaction
23 to a recognized esteem or self-actualization need is judged not
24 by evaluative techniques reflective of the type of need which
25 prompted the request, but rather techniques more akin to
26 measuring physiological needs. The measurement according to
27 the Still court is whether there is undeveloped residential
28 land inside the urban growth boundary, not whether there are
29 five acre rural "ranchette" parcels available. The reference

1 simply to residential land seems to reflect a concern for the
2 existence of land on which to build "shelter" not land which
3 will meet a esteem or self-actualization need for a five acre
4 "ranchette."

5 In summary, the LCDC should clarify what is meant by the
6 use of "need" in the goals. In the meantime, this Board should
7 not perpetuate the use of the vague word as a short-cut term.
8 To do so merely adds to the confusion.

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1 FOOTNOTES

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4 The exception procedure is set forth in Goal 2 and provides
as follows:

5 "When, during the application of the statewide
6 goals to plans, it appears that it is not possible to
7 apply the appropriate goal to specific properties or
8 situations, then each proposed exception to a goal
shall be set forth during the plan preparation phases
and also specifically noted in the notices of public
hearing. The notices of hearing shall summarize the
9 issues in an understandable and meaningful manner.

10 "If the exception to the goal is adopted, then
the compelling reasons and facts for that conclusion
11 shall be completely set forth in the plan and shall
include:

12 "(a) Why these other uses should be
13 provided for;

14 "(b) What alternative locations within the
area could be used for the proposed uses;

15 "(c) What are the long term environmental,
16 economic, social and energy consequences to the
locality, the region or the state from not
17 applying the goal or permitting the alternative
use;

18 "(d) A finding that the proposed uses will
19 be compatible with other adjacent uses."

20 2

21 The only evidence in the record concerning adequacy of
22 housing in Tillamook County was a report attached to the
county's finding. That report, however, concluded:

23 "There will be no shortage of land zoned for
24 housing in the central county area."

25 3

26 The county has made no attempt to justify approval of
this housing development outside the UGB on the basis
advanced by Petitioner DLCD. That is, respondents do not

1 argue, and the findings do not show, that:

2 "****The rural resource land location of the
3 proposed residential development is necessary to
4 satisfy the housing needs generated by the location of
5 rural industrial, commercial or other economic
6 activites in this area."

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6 We do not, thus, decide whether Goal 10's requirement
7 that plans provide for flexibility of housing location,
8 type and density even applies outside the UGB. While this
9 is a question which we believe should be addressed by LCDC
10 as a matter of policy, we have no recommendation to make
11 on the issue in this case.

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11 In view of our conclusion concerning the adequacy of
12 the exception to Goal 3 it is not necessary to reach
13 petitioner's other assignments of error.

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14 Black's Law Dictionary defines need as:

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15 "a relative term, the concept of which must, within
16 reasonable limits, vary with the personal situation of
17 the individual employing it." In re Skuse's Estate,
18 165 Misc. 554, 1 NYS 2d 202, 205.

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18 Abraham H. Maslow. "A Theory of Human Motivation,"
19 Psychological Review (July 1943), pp. 370-396.

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21 Maslow ranked the five needs as follows:

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5. Self-actualization

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4. Esteem

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3. Social (Love)

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2. Safety

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1. Physiological

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STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 6/09/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: DLCD v TILLAMOOK COUNTY
LUBA No. 81-004

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

This case is about a plan amendment and zone change which would allow development of 46 housing units (including mobile homes) on a 38 acre parcel of agricultural land located five miles south and outside the urban growth boundary of the City of Tillamook. Petitioner alleges the decision violates statewide planning Goals 2, 3, 11 and 14. The Board, however, only addressed in its proposed opinion petitioner's assignments of error concerning Goals 2 and 3. The Board concluded that petitioner was correct in its contention that Tillamook County had not properly addressed the "need" and "alternatives" requirements of Goal 2, Part II, Exceptions.

At the conclusion of oral argument in this case, the Board requested supplemental briefs limited to the issue of what must be shown to satisfy the "need" requirement in Goal 2, Part II, Exceptions. The Board, after review of the supplemental briefs, was unable to decide upon a test by which a jurisdiction could justify a "need" for residential housing on rural, resource land. All we were really able to say in this case was that, at a minimum, in order to satisfy the "need" criterion in Goal 2, it would have to be shown that rural, non-resource land was not available to satisfy whatever need there may be for rural residential housing. The county made no finding in this case that rural, non-resource land did not exist in sufficient quantities to satisfy whatever need there may be for rural residential housing.

Amicus has argued that Goal 10's requirement that a jurisdiction provide for flexibility of housing location, type and densities could be used as a basis for justifying using rural, resource land for residential housing. We did not decide in this case whether Goal 10's requirement concerning flexibility of housing location, type and density even applies outside an urban growth boundary. The Commission, however, may want to address this issue as a policy matter in this case or through a policy paper or rule. We have attached to this memo the supplemental briefs of the parties which address the question of need.



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There is nothing particularly significant about the Board's opinion in this case. If the Commission wants to add more to the Board's opinion, such as by more thoroughly discussing the question of whether Goal 10 applies outside the urban growth boundary, the Commission may want to have the benefit of oral argument from the parties, including amicus. However, we do not believe oral argument is necessary for the Commission to review the Board's opinion in this case. Therefore, we do not recommend oral argument in this case, preferring to leave the question of whether oral argument should be allowed to the Commission's discretion.

