

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

3 CLIFFORD LAMB,

4 Petitioner,

5 vs.

6 LANE COUNTY,

7 Respondent.

)
)
) LUBA No. 82-034
)
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)

)
) AMENDMENT TO
) FINAL OPINION
) AND ORDER
)

8 Appeal from Lane County

9 Robert L. Liberty
10 400 Dekum Building
11 519 SW 3rd Avenue
 Portland, OR 97204
 Attorney for Petitioner

 William A. Van Vactor
 Lane County Counsel
 125 E. 8th Avenue
 Eugene, OR 97401
 Attorney for Respondent

12 BAGG, Board Member; COX, Board Member; participated in the
13 decision.

14 2/14/83

1 BAGG, Board Member.

2 This matter is before the Board by agreement of the
3 parties. On February 1, 1983, the Board issued a final order
4 in the above entitled matter.

5 The ordinance appealed, "Ordinance 1-82, as amended,"
6 enacted a number of zones. The zones challenged in the
7 proceedings were forest zones, FM, F-1, F-2 and FF-20. The
8 parties did not mention and the Board's order did not discuss
9 certain agricultural zones enacted by Ordinance 1-82, as
10 amended. The Board was not aware of these other enactments,
11 and the Board's order of February 1, 1983, simply reversed
12 Ordinance 1-82, as amended, in its entirety. The parties ask
13 that we change the final order to reverse only that part of
14 Ordinance 1-82, as amended, that enacts the FM, F-1, F-2 and
15 FF-20 zones.

16 The order of February 1, 1983, in the above entitled
17 proceeding is amended to strike the final paragraph appearing
18 on page 10 and substitute the following:

19 "That portion of Ordinance 1-82, as amended, that
20 enacts zoning districts FM, F-1, F-2 and FF-20 is
21 reversed."
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FEB 4 2 47 PM '83

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

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CLIFFORD LAMB,)
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Petitioner,)
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vs.)
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LANE COUNTY,)
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Respondent.)

LUBA No. 82-034

FINAL OPINION
AND ORDER

Appeal from Lane County.

Robert L. Liberty, Portland, filed the Petition for Review and argued the cause on behalf of Petitioner.

William A. Van Vactor, Eugene, filed the brief and argued the cause on behalf of Respondent.

BAGG, Board Member; COX, Board Member; participated in this decision.

Reversed* 2/01/83

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).

* This opinion incorporates a modification (which is highlighted on page 9) made by the Land Conservation and Development Commission at its January 27-28, 1983 meeting.

1 BAGG, Referee.

2 NATURE OF THE DECISION

3 This review proceeding is about an amendment to the Lane
4 County Zoning Ordinance. The ordinance, "Ordinance No. 1-82,
5 As Amended," changes certain forest use zones within the
6 county. Petitioner claims that the ordinance violates Goal 4
7 in several particulars.¹

8 FACTS

9 The land use decision on appeal is an ordinance that
10 establishes or modifies four forest zones in Lane County, the
11 FM, F-1, F-2 and FF-20 zones. The ordinance provides standards
12 for partitioning land in the forest zones, and it provides for
13 certain permitted and conditional uses in the forest zones.
14 The ordinance is accompanied by an order adopting findings in
15 support of the ordinance. The findings recite that the purpose
16 of the ordinance is to provide "interim resource protection
17 while Lane County's comprehensive plan is revised to fully
18 comply with state goals." Also included as findings is the
19 staff report of the Land Conservation and Development
20 Commission staff made during the course of Lane County's
21 acknowledgment proceeding in February of 1981. The Lane County
22 comprehensive plan has not been resubmitted to the Land
23 Conservation and Development Commission for acknowledgment.

24 ASSIGNMENT OF ERROR NO. 1

25 Assignment of error number one alleges:

26 //

1 "LANE COUNTY ORDINANCES 10.102-40, 10.103-50,
2 10.104-40 VIOLATE GOAL 4 BY PERMITTING THE DIVISION OF
3 FOREST LANDS INTO PARCELS WIHOUT REGARD TO WHETHER THE
4 RESULTING PARCELS WILL 'CONSERVE FOREST LANDS FOR
5 FOREST USES' AS REQUIRED BY GOAL 4."2

6
7 Petitioner argues that Lane County standards do not
8 adequately protect forest land for forest uses. Divisions of
9 land within forest zones are allowed, according to petitioner,
10 without adequate safeguards. The three forest zones include a
11 common text controlling land division as follows:

12 "Area. Divisions of land shall be approved upon
13 satisfaction of either LC 10-102-40(1), (2) or (3)
14 below:

15 "(1) The proposed parcels are the optimum size for
16 the commercial production of forest products and are
17 sufficient in size to support the production of wood
18 fiber in a manner consistent with that on the
19 surrounding land. Such finding shall be based upon a
20 determination that the proposed parcels:

21 "(a) Are equal to the median size of parcels
22 being used for the same purpose in the immediate
23 area. Immediate area shall mean the section in
24 which the subject property is located along with
25 the eight surrounding and adjacent sections,
26 excluding such areas as may lie outside the
27 boundaries of Lane County, Oregon. Forest lands
28 shall mean any property having a property
29 classification beginning with the digit '6' or
30 having '6' as the second digit as shown on the
31 latest approved tax roll. Ownerships of less
32 than 10 acres shall not be included in the
33 calculations nor any parcels in public ownership.

34 "(b) Are not less than 40 acres in size.[*]

35 "[2)] The land is not suitable for large-scale
36 production of wood products, however, will continue to
37 remain in forest use as a commercial producer of wood
38 products. Such determination shall be based on the
39 following factors:

40 / /

1 "(a) Existing land use, ownership pattern and
2 nature of development in the area prevent the
3 land from being combined into production units as
4 described in (1) above. Unwillingness of
5 adjacent owners to buy or sell and/or price shall
6 not be considered as the sole factor preventing
7 the combining of lands into larger units; and

8 "(b) The size and configuration of the proposed
9 parcels are adequate for the production of wood
10 products taking into account soil productivity,
11 access, terrain location, operational
12 requirements, special soil or land conditions,
13 size of the forest unit including all contiguous
14 land under the same ownership and extent and
15 nature of work to be performed; and

16 "(c) The management of the proposed parcels will
17 provide for greater production of wood products
18 than would be possible had the land not been
19 divided. In making such comparisons the same
20 assumptions and factors shall be used for both
21 conditions. Potential loss of production through
22 future home sites, accessory buildings and other
23 improvements must be identified and included in
24 the comparison.

25 "(3) The land is not suitable for commercial
26 production of wood products, however, will continue to
27 remain in forest use. Such determination shall be
28 based on the following factors:

29 "(a) The land has a predominance of soils having
30 a cubic foot class (Douglas Fir) of less than 5;

31 "(b) The proposed parcels will provide for
32 continued forest uses other than production of
33 wood products as such are specified in State
34 Planning Goal 4 by having an area of 20 acres or
35 greater or equivalent density." Lane Code Sec
36 10.103-50

37 [* 40 acres in the FM and F-1 zones and 20 acres in
38 the F-2 and FF zones.]

39 Petitioner argues the standards in the first of the forest
40 land division standards has no factual basis and relies on an
41 improper survey analysis. Petitioner points to testimony in

1 the record that a minimum acreage should be that which is
2 capable of a harvest income that will pay for management
3 costs. Additionally, petitioner argues that Lane County
4 performed a median-parcel survey which is not justified. That
5 is, petitioner alleges there are no reasons stated for making
6 use of a median-parcel survey technique. Petitioner argues
7 that the county should have

8 "discussed the definition of commercial forest
9 management units with timber companies, the state
10 Department of Forestry, the U.S.D.A.'s farm-forestry
11 specialist and forest economists, as well as
12 conducting a survey of existing parcelization.
Without that kind of inquiry, there is no adequate
justification for either the minimum acreage or the
median-parcel survey technique."

13 We understand petitioner's argument to be that the county is
14 allowing partitioning on surrounding parcelization without
15 regard to whether the survey of the surrounding parcelization
16 was limited to commercial forestry units only. Petitioner
17 argues that the survey should be limited to such commercial
18 units and cites Sane and Orderly Development v Douglas County,
19 2 Or LUBA 196 (1981).³

20 Petitioner then argues that the second forest land division
21 standard, that based on unsuitability for production of forest
22 products, has no basis in fact. Petitioner claims that the
23 county did not conduct a survey to determine whether or not the
24 small parcel intensive forestry uses discussed in paragraph [(2)]
25 were actually even practiced in Lane County. In the absence of
26 evidence showing this kind of intensive commercial activity,

1 petitioner argues that Lane County must insure the retention of
2 commercial forest land for the kind of commercial forest uses
3 protected by the standards set out in the first division of
4 10.103-50, supra.

5 Lastly, petitioner argues that the third of Lane County's
6 forest land division standards has no factual basis.⁴

7 Petitioner argues that there is no showing that the 20 acre
8 minimum lot size will in fact retain forest land for the
9 non-commercial forest uses specified in Goal 4.⁵

10 Respondent argues that the ordinance is an interim
11 ordinance. Respondent says the ordinance was passed in order
12 to satisfy some fears regarding Goal 4 compliance expressed by
13 LCDC. Respondent says it knew it did not yet have all the
14 information it needed to justify the divisional criteria, but
15 it had to provide interim protection for resource lands.

16 Respondent says that if the purpose of Ordinance 1-82, as
17 amended, was to fully comply with Goal 4, then petitioner's
18 attack based on lack of information might have merit.

19 Respondent argues, in other words, that the ordinance does
20 not now, nor does it need to comply fully with Goal 4 to be
21 effective as an interim ordinance.

22 We know of no provision that allows for the passage of an
23 interim ordinance which does not fully comply with all the
24 applicable statewide land use goals. The county has admitted
25 that there is insufficient factual data (or inventory) in the
26 record to support a conclusion that the ordinance complies with

1 Goal 4. Our review of the record confirms that there are
2 insufficient facts to satisfy the goal's inventory
3 requirements. The goal requires that "lands suitable for
4 forest uses shall be inventoried and designated as forest
5 lands.⁶ Without the inventories mandated by the goal, the
6 county can not know whether application of the ordinance will
7 result in loss of forest land. We believe Lane County's
8 attempt to provide interim protection during the period of its
9 comprehensive plan development and adoption is laudable.
10 However, as each and every land use decision must comply with
11 applicable goals whether the decision is an interim ordinance
12 or a permanent ordinance, and we can not sustain the ordinance
13 against a goal challenge on the ground that the ordinance is
14 temporary. This ordinance might provide a convenient framework
15 by which the county might analyze any partitioning request that
16 comes before it, but the ordinance cannot be applied alone and
17 used to claim compliance with Goal 4. Notwithstanding the
18 existence of this ordinance, and perhaps in defiance of it,
19 Lane County must assure that all partitions for forest land
20 comply with the goal.

21 Assignment of error number one is sustained.

22 ASSIGNMENT OF ERROR NO. 2

23 Assignment of error number two alleges:

24 "LANE COUNTY'S FOREST ZONES PERMIT USES NOT ALLOWED
25 UNDER GOAL 4."

26 Petitioner argues that the uses provided in Goal 4 are the

1 only uses permitted in forest land except for decisions of the
2 Land Conservation and Development Commission and LUBA which
3 "have elaborated slightly on these uses." See footnote 4,
4 supra. Petitioner says

5 "Although some uses may not be listed as a permitted
6 use, if they are part of the permitted forest uses,
7 then they would not violate Goal 4. Thus, if a
8 dwelling, for example, is not a necessary part of that
9 forest use, it is an impermissible non-forest use.
10 1000 Friends of Oregon v. Marion County Board of
11 Commissioners, 1 Or LUBA 33, 39 (1980). The kinds of
12 'outdoor recreational activities and related support
13 services and wilderness values compatible with these
14 uses' permitted under Goal 4 include hiking or ski
15 shelters, outdoor lavatories and drinking fountains,
16 but not tennis courts, swimming pools or ski trails.
17 Teamsters Local Union No. 670, et al. v. Hood River
18 County, 2 LCDC 83, 98 (1979)."

13 Petitioner then lists a number of uses allowed in the MF
14 district which petitioner claims are not authorized by Goal 4.
15 Petitioner similarly lists uses not specifically allowed by
16 Goal 4 for the F-1 district, the F-2 district and the FF
17 district. Petitioner does not discuss ordinance provisions
18 that condition these allegedly improper uses.⁷

19 Respondent defends the uses complained of as uses that are
20 permitted by the goal. Respondent adds that the review of each
21 proposed use, the siting and compatibility study required to
22 allow the use and the conditions that may be imposed by the
23 county are sufficient to insure that the uses meet requirements
24 of Goal 4. For example, within the FM district, airplanes,
25 helipads and balloon bedding areas are allowed. Respondent
26 argues that the ordinance provides that these uses are allowed

1 "accessory to a permitted use" that is, accessory to a forest
2 use. Respondent states that as long as the strips, helipads
3 and balloon bedding areas are used accessory to a forest use,
4 they are perfectly valid under Goal 4. Respondent argues that
5 the petitioner has made a broad scale attack on the uses and
6 glosses over the limitations on the uses which Lane County has
7 imposed.

8 Our review of the county's ordinance leads us to conclude
9 that the uses allowed, even under conditions and limitations,
10 violate Goal 4. We understand petitioner to argue that Goal 4
11 prohibits uses not enumerated in Goal 4 unless the use is an
12 essential part of one of the permitted, enumerated uses. In
13 other words, unenumerated uses which are necessary and
14 accessory to an enumerated forest use are permitted because
15 they are, in effect, part of uses expressly authorized by Goal
16 4. For example, roads are not enumerated in Goal 4 as being an
17 authorized use in lands zoned for forest uses. However a
18 logging road is a necessary accessory of commercial forestry
19 production and would be permitted under petitioner's
20 interpretation. We agree with that interpretation.
21 Restrictions and conditions placed on unenumerated
22 non-accessory uses, such as buffering, are irrelevant because
23 they fail to assure that forest lands are retained for the
24 enumerated forest uses under this standard. Relevant
25 conditions or restrictions would measure whether a use is, in
26 fact, accessory.

1 Assignment of error no. 2 is sustained.

2 ASSERTIONS BY RESPONDENT

3 Respondent asks us to consider the effect of a reversal or
4 remand of this decision. Respondent complains that if we
5 reverse Ordinance No. 1-82, as amended, we will be resurrecting
6 prior ordinances that provide no protection for Goal 4 lands.
7 As stated earlier, all land use actions within the county must
8 comply with Goal 4, regardless of whether or not an ordinance
9 is in place. We do not believe an order reversing the
10 ordinance will adversely affect goal compliance in Lane
11 County. The county's continuing obligation to comply with the
12 goal is not affected by the presence or absence of an
13 ordinance.

14 Respondent concludes its brief with what we understand to be a
15 motion for dismissal. Respondent notes that the ordinance
16 appealed as stated in the notice of intent to appeal and in
17 petitioner's brief is called "Ordinance 1 82, amending Lane Code
18 Chapter 10." Respondent says that ordinance was never enacted,
19 what was enacted was Ordinance 1-82, as amended. We do not
20 believe this apparent clerical error is significant. The
21 ordinance referred to in the notice of intent to appeal is an
22 amendment to Lane Code in Chapter 10, the resources section of the
23 Lane Code. Petitioner correctly attached a copy of Ordinance
24 1-82, as amended, to his petition for review and referred
25 correctly to the ordinance throughout. We find no error.

26 Ordinance 1-82, as amended, is reversed.

FOOTNOTES

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4 Goal 4 states:

5 "Forest land shall be retained for the production of
6 wood fibre and other forest uses. Lands suitable for
7 forest uses shall be inventoried and designated as
8 forest lands. Existing forest land uses shall be
9 protected unless proposed changes are in conformance
10 with the comprehensive plan.

11 "In the process of designating forest lands,
12 comprehensive plans shall include the determination
13 and mapping of forest site classes according to the
14 United States Forest Service manual 'Field
15 Instructions for Integrated Forest Survey and Timber
16 Management Inventories - Oregon, Washington and
17 California.'"

18 2

19 Lane County Ordinances 10.102-40, 10.103-50 and 10.104-40
20 provide for area or lot size criteria for division of land
21 within the FM (Forest Management), F-1 and F-2 forest zones in
22 Lane County.

23 3

24 Petitioner also argues that the terms "large scale
25 production," "commercial" and "unsuitable" are not adequately
26 defined and therefore are not capable of application. We do
27 not need to reach this assertion nor do we address petitioner's
28 view that Goal 4 embodies a "commercial" standard similar to
29 that in Goal 3.

30 4

31 Petitioner does not allege a violation of Goal 2, the goal
32 requiring, among other things, that plans have an adequate
33 "factual base." We do not, therefore, believe the issue of
34 whether the county had proper inventories or whether the
35 decision was supported by substantial evidence is before us.
36 We find for the petitioner on the basis of the requirement in
37 Goal 4 that forest lands be "inventoried" and "retained for the
38 production of wood fibre and other forest uses."

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2 Goal 4 - Forest Uses - are:

3 "(1) the production of trees and the processing forest
4 products; (2) open space, buffers from noise, and
5 visual separation of conflicting uses; (3) watershed
6 protection and wildlife and fisheries habitat; (4)
7 soil protection from wind and water; (5) maintenance
8 of clean air and water; (6) outdoor recreational
9 activities and related support services and wilderness
10 values compatible with these uses; and (7) grazing
11 land for livestock."
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20 Goal 4's definition of "Forest Lands" states:

21 "Forest Lands -- are (1) lands composed of existing
22 and potential forest lands which are suitable for
23 commercial forest uses; (2) other forested lands
24 needed for watershed protection, wildlife and
25 fisheries habitat and recreation; (3) lands where
26 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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31 Uses permitted under Lane County's Amended Forest Zones
32 which petitioner argues are not authorized by Goal 4 are as
33 follows:

34 1. FM District:

35 Airplane strips, helipads and balloon bedding areas.

36 Rock Quarries and accessory activities.

37 Mineral exploration and accessory activities.

38 Dog Kennels.

39 "Minor" and "Major Rural Home Occupations."
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1 One single family dwelling or mobile home "in
2 conjunction with" inter alia forestry operations and
3 accessory uses, (regardless of whether they are a
4 necessary part of an authorized Goal 4 use), growing
5 berries, nursery stock or raising rabbits and dairying
6 conducted on lots at least 20 acres in size.

7 One single-family dwelling or one mobile home "not in
8 conjunction with" the various agricultural and
9 forestry uses permitted under LCD 10.102-10(1), (2)
10 and (3), provided improvements "will not impose
11 limitations upon existing farm or forest practices"
12 and? or? the use "will not detrimentally affect"
13 commercial and noncommercial forestry or farm uses.

14 "Group quarters, transient lodgings or other buidings
15 customarily provided in conjunction with permitted
16 uses" (including non-farm and non-forest uses.)

17 Public or private recreational uses not qualifying as
18 permitted camping or picinic areas.

19 Power and communications transmission facilities,
20 canals, flumes and pipelines.

21 Signs.

22 2. F-1 District

23 Rock, sand, gravel and loam quarries or extraction and
24 accessory uses.

25 Mineral exploration.

26 "Minor" and "Major Rural Home Occupations."

Electrical power generation and transmission
facilities, canals, pipelines, flumes and water
storage areas.

Geothermal energy development.

Any residential structure, subject to certain siting,
fire control and compatibility standards.

Signs.

3. F-2 District

"Major" and "Minor Rural Home Occupations."

- 1 Rock, sand, gravel or loam extraction.
- 2 One single-family home or mobile home per lot subject
- 3 to certain non-interference standards.
- 4 Public and semi-public service structures, like fire
- 5 stations and utility substations.
- 6 Animal hospitals and kennels.
- 7 Churches.
- 8 Schools.
- 9 Electricity transmission facilities.
- 10 Flood control and irrigation projects.
- 11 Radio and television studios and transmission towers.
- 12 Stables and riding academies.
- 13 Personal use airfields.
- 14 Cemetaries.
- 15 Golf courses.
- 16 Sewage treatment facilities.
- 17 Non-accessory communication facilities.
- 18 "Accessory dwellings for persons employed on the
- 19 premises."
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BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF
LANE COUNTY

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COMPLIANCE ACKNOWLEDGMENT
DENIAL ORDER

On September 2, 1980, Lane County, pursuant to ORS Ch. 197.251(1) (1977 Replacement Part), requested that their comprehensive plan and implementing measures, consisting of the documents listed in Section III of the attached written report be acknowledged by the Land Conservation and Development Commission in compliance with the Statewide Planning Goals.

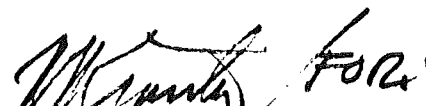
The Commission reviewed the attached written report of the staff of the Department of Land Conservation and Development on February 13, 1981 regarding the compliance of the aforementioned plan and measures with the Statewide Planning Goals. Section IV of the report constitutes the findings of the Commission.

Based on its review, the Commission finds that Lane County's comprehensive plan and implementing measures do not comply with the Statewide Planning Goals 2-7, 9, 11-13 and 15-18 adopted by this Commission pursuant to ORS Ch. 197.225 and 197.245.

NOW THEREFORE BE IT ORDERED THAT:

The Land Conservation and Development Commission does not acknowledge that the aforementioned comprehensive plan and implementing measures of Lane County comply with Statewide Planning Goals 2-7, 9, 11-13 and 15-18. In order to comply, Lane County must complete the tasks listed in Section V (pages 184-202) of the attached written report.

DATED THIS 26th DAY OF February, 1981.



Lorin Jacobs, Chairman
Land Conservation and Development
Commission

LJ:LC:clf

Attachment

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

IN THE MATTER OF LANE COUNTY'S
REQUEST FOR ACKNOWLEDGMENT OF
COMPLIANCE

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)

COMPLIANCE ACKNOWLEDGMENT
REVIEW POSTPONEMENT

On September 2, 1980, Lane County, pursuant to ORS 197.251 (1977 Replacement Part), requested that their Comprehensive Plan and Implementing Measures be acknowledged by the Land Conservation and Development Commission to be in compliance with the Statewide Planning Goals.

Oregon Law, specifically ORS 197.251(1), requires that the Commission review and approve or deny the request within 90 days.

The Commission finds, however, that pursuant to ORS 197.251(1) (1977 Replacement Part) the following extenuating circumstances will necessitate a delay in Commission review of the Comprehensive Plan and Implementing Measures of Lane County for the area known as the "industrial triangle" as defined by Lane County Ordinance No. 763. This ordinance amended the Willamette Long Tom Subarea Plan and took an exception to Goal 3 for this area.

1. The exception to Goal 3 taken for this area relies on findings contained in the Metro Area General Plan. The exception asserts that the area is required to meet metropolitan area industrial land needs. The Metropolitan Area General Plan has been submitted for acknowledgment and will be scheduled for review in the near future.
2. The County's plan amendment and exception have been appealed to LUBA by the City of Eugene. The case is pending before LUBA at this time.
3. The City of Junction City has accepted the Commission's continuance offer requiring revisions to the urban growth boundary. During this review period, recommendations to include portions of the "industrial triangle" within the UGB have been made.

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

LAND USE
BOARD OF APPEALS

FEB 10 12 58 PM '83

CLIFFORD LAMB

Petitioner,

v.

LANE COUNTY

Respondent

LUBA NO. 82-034
LCDC DETERMINATION

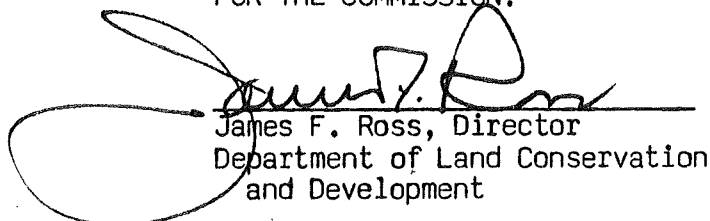
The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA 82-034, with the following modifications:

Delete the paragraph on page 9, lines 8-19 and substitute the following paragraph:

"Our review of the county's ordinance, leads us to conclude that the uses allowed, even under conditions and limitations, violate Goal 4. We understand petitioner to argue that Goal 4 prohibits uses not enumerated in Goal 4 unless the use is an essential part of one of the permitted, enumerated, uses. In other words, unenumerated uses which are necessary and accessory to an enumerated forest use are permitted because they are, in effect, part of uses expressly authorized by Goal 4. For example, roads are not enumerated in Goal 4 as being an authorized use in lands zoned for forest uses. However a logging road is a necessary accessory of commercial forestry production and would be permitted under Petitioner's interpretation. We agree with that interpretation. Restrictions and conditions placed on unenumerated non-accessory uses, such as buffering, are irrelevant because they fail to assure that forest lands are retained for the enumerated forest uses under this standard. Relevant conditions or restrictions would measure whether a use is, in fact, accessory."

DATED THIS 31 DAY OF JANUARY 1983.

FOR THE COMMISSION:


James F. Ross, Director
Department of Land Conservation
and Development

The Commission will review this area as a part of its review of the Metropolitan Area General Plan or sooner.

DATED THIS 26th DAY OF February, 1981.



W. J. Kvarsten, Director
For the Commission

WJK:LC:clf



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION

DATE: 8/02/82

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: LAMB V. LANE COUNTY
LUBA NO. 82-034

RECEIVED
1982
ATTORNEY GENERAL
SALEM, OR

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

This case is about amendments to the Lane County Zoning Ordinance. The ordinance, "Ordinance No. 1-82 As Amended," changes certain forest use zones in Lane County. The county claims that the ordinance is an interim ordinance designed to answer concerns expressed by LCDC and DLCD at the last Lane County acknowledgment review.

Petitioner attacks the ordinance as allowing division of forest land without proper regard to whether the resulting parcels will conserve forest lands for forest uses as required by Goal 4. Petitioner claims standards in the ordinance do not adequately protect forest land for forest uses. Certain constructions of the ordinance are possible so as to allow divisions of land and uses which would violate the goal. Part of petitioner's argument rests on petitioner's assertion that the record does not contain sufficient facts to justify the inventory requirement contained in Goal 4.

We agree with the petitioner's challenge. Our review of the record confirms that there are insufficient facts to satisfy the Goal 4 inventory requirements. Because of the inadequate inventory, the county's partitioning standards do not protect resource land with any certainty. Further, we understand the county's wish to comply with your acknowledgment order, but we are unaware of any legal authority for the proposition that a "interim" ordinance which admittedly does not fully comply with Goal 4 can have any force or effect.

The second of petitioner's arguments is that certain uses are permitted in the Lane County ordinance that are not consistent with the uses permitted by Goal 4. Again, we agree with the petitioner. We have included a footnote listing the uses permitted by the county that do not appear to be authorized in the goal. We believe this issue is one for which additional rulemaking by the commission might be appropriate.

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.



Contains Recycled Materials

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

3	CLIFFORD LAMB,)	
)	
4	Petitioner,)	LUBA No. 82-034
)	
5	vs.)	
)	
6	LANE COUNTY,)	PROPOSED OPINION
)	AND ORDER
)	
7	Respondent.)	

8
9 Appeal from Lane County.

10 Robert L. Liberty, Portland, filed the Petition for Review
and argued the cause on behalf of Petitioner.

11 William A. Van Vactor, Eugene, filed the brief and argued
the cause on behalf of Respondent.

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

14 Reversed 8/02/82

15
16 You are entitled to judicial review of this Order.
17 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a).

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

CLIFFORD LAMB,)
)
Petitioner,)
) LUBA No. 82-034
vs.)
) ORDER
LANE COUNTY,)
)
Respondent.)


This matter is before the Board on motion of respondent Lane County to allow the Land Conservation and Development Commission to appear herein and comment on the uses allowed in Ordinance 1-82, as amended, the ordinance on review in this proceeding. Respondent makes the motion on its belief "that uses permitted by Goal 4 are difficult issues and that LUBA may wish the technical assistance of the Department."

Petitioner objects to the appearance of the LCDC staff. Petitioner argues that the review proceeding before LUBA is not a mini-acknowledgment proceeding. Petitioner wants a review on the merits of this case not clouded with what may or may not have occurred or is likely to occur during an acknowledgment proceeding before LCDC.

We deny the motion for participation by DLCD staff. Because this case involves allegations of statewide planning goals, DLCD staff will have an opportunity to comment on our proposed opinion before the Land Conservation and Development Commission passes on the adequacy of our analysis. As such, we believe that any technical assistance that might be necessary

1 will be given, before issuance of the final opinion, and we see
2 no need for DLCD's participation at this time.

3 Dated this 2nd day of August, 1982.

4
5
6 
7 John T. Bagg
Hearings Referee