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

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WINKIE TURNER, ELMER and)
ALMA BELLER, EDNA BERGER,)
RALPH and JANET ELLIS,)
LESLIE and CHARLOTTE EWING,)
DONNA CLOHESSY, HELEN)
HOLSMAN, FRED WM. KARPURK,)
OTTO SCHWIND, RAY and VELMA)
ANDERSON, HARRY and LAVERNE)
BERNHARDT, WAYNE BERGER,)
BRIAN O. and IDABELLE BURT,)
DAVID R. and GERALDINE BURT,)
FRANK and IDA CONRAD, W.P.)
and GLORIA CORNELL, CLIFFORD)
and MILDRED DUTRO, WILBUR)
and GLENDA HENRY, GERALD and)
ROSEMARIE HEINCKX, RALPH and)
DOROTHY HESS, EDDIE HOLSMAN,)
ART and TERI IWASAKI, CAROL)
and TOM JONES, ALOIS and)
MARGARET KAUFMAN, JACK LEHMAN,)
LENARD and RITA MARTIN, SARAH)
E. MEYER, BOB ORME, LINDA)
PITTS, DR. ARCHIE O. and)
ELLEN PITTMAN, JIM and)
VIRGINIA PALOTAY, TUALATIN)
VALLEY COMMUNITY CHURCH by)
RON RODEN, SUSAN and JOHN)
BATES, CHARLES and GAIL)
TISTADT, WARREN and SHARON)
BROWN, RICHARD and VICKI)
BRIGHT,)
Petitioners,)
vs.)
WASHINGTON COUNTY, OREGON,)
Respondent.)

LUBA No. 83-014

FINAL OPINION
AND ORDER

Appeal from Washington County.

Edward J. Sullivan, Portland, filed the Petition for Review and argued the cause on behalf of Petitioners. With him on the brief were O'Donnell, Sullivan and Ramis.

1 Jack L. Orchard, Portland, filed the brief and argued the
2 cause on behalf of Respondent-Participants Standard Insurance
3 Company and Park City Corporation. With him on the brief were
4 Ball, Janik and Novack.

5 Washington County appeared through Respondent-Participants
6 Standard Insurance Company.

7 BAGG, Board Member.

8 REMANDED 7/22/83

9 You are entitled to judicial review of this Order.
10 Judicial review is governed by the provisions of Oregon Laws
11 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

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1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioners appeal a decision by the Board of County
4 Commissioners of Washington County granting a conditional use
5 permit for a non-residential planned unit development.
6 Petitioners ask that we reverse the conditional use permit.

7 STANDING

8 Petitioners allege they appeared orally through counsel and
9 in writing before the planning commission. They appealed the
10 planning commission decision to the Washington County Board of
11 Commissioners. Petitioners also filed a petition for rehearing
12 before the county board. Petitioners claim they fall into two
13 categories: first, there are those who were entitled to and
14 received notice of the proceedings and who participated in
15 them; and, second, there are persons who live or are property
16 owners within sight and sound of the proposal and would be
17 adversely affected and aggrieved by the grant of the proposal.

18 Respondent-Participants Standard Insurance Company and Park
19 City Corporation (respondents) object to petitioners' right to
20 challenge

21 "Washington County's adoption of the 185th East/West
22 Plan and the County's Growth Management Policies
23 (embodied in Ordinances 242 and 243) or any issues
24 relating to the county's 1973 Comprehensive Framework
Plan or County ordinances considered in the 185th
East/West process." Brief of respondents at 1.

25 As we understand the argument, respondents allege petitioners
26 did not attack these enactments at the proper time and are,

1 therefore, too late to complain about any aspect of this
2 proposal that relies on the 185th East/West Plan.

3 Petitioners have standing to bring this appeal. We do not
4 understand respondents to challenge the truth of petitioners'
5 claim to standing pursuant to 1979 Or Laws, ch 772, sec 4, as
6 amended by 1981 Or Laws, ch 748. Whether or not petitioners
7 may attack certain enactments by Washington County through this
8 development is not a matter of standing under our controlling
9 law.

10 FACTS

11 In January of 1982, Standard Insurance Company and Park
12 City Corporation filed an application for a conditional use for
13 a planned unit development in Washington County. The planning
14 commission heard the matter and approved the application on
15 April 14, 1982, but voted to renote and rehear the matter
16 because notice for the original hearing did not make a required
17 statement that Washington County's "Growth Management Policies"
18 would be considered. The planning commission again approved
19 the application on June 30, 1982, and on August 9, 1982,
20 petitioners filed a notice of review with the Washington County
21 Board of Commissioners. On October 19, 1982, the board of
22 commissioners considered the matter and held it over until
23 October 26, 1982, and then again to November 30, 1982. At the
24 November 30 meeting, the board directed its staff to write up
25 an order with the cooperation of the applicant. The decision
26 on the application and the findings was continued until

1 December 14, 1982, and then again until December 21, 1982, when
2 the board adopted a final order approving the conditional use.
3 Petitioners herein filed a petition for rehearing on January 3,
4 1983, which was denied on January 18, 1983. This appealed
5 followed.

6 The application filed in January of 1982 listed the number
7 of acres as 218. However, the map and tax lots filed describe
8 property totalling some 600 acres. The final order lists the
9 same tax lots which when added together show a 600 acre parcel
10 for the planned unit development. Notice of the board of
11 commissioners' proceedings leading to the final approval
12 similarly show this 600 acre total. However, the proceedings
13 before the board, including the county staff report, discuss
14 only a 218 acre total for this proposed use.

15 The property is within an acknowledged urban growth
16 boundary and is designated "Industrial" in the county's 185th
17 East/West Community Plan.

18 ASSIGNMENT OF ERROR NO. 1

19 "The Board of Commissioners lacked jurisdiction over
20 the subject application for failure to give adequate
and timely notice."

21
22 Petitioners' argument under this assignment of error is
23 included in a motion for remand.

24 Petitioners claim the notice before the county planning
25 commission and the board of commissioners was defective in that
26 it erroneously showed the area subject to the conditional use

1 request to be a 600 acre parcel. The application was for 218
2 acres. Further, the final order purports to grant a
3 conditional use for the whole 600 acre parcel, not simply for
4 the 218 acre parcel. Petitioners claim to have raised this
5 error at each stage of the proceedings. They argue the defect
6 violates Section 2201-2.1 of the Washington County Zoning
7 Article which requires that all notices of public hearing
8 include a discription of the property "reasonably calculated to
9 give notice as to its actual location."¹ Petitioners add the
10 notice does not announce the stage of the application (phase 1
11 of an outline master plan), and the notice does not say that
12 the nature of the application is one of four kinds of possible
13 planned unit development schemes.

14 Petitioners also complain the notice failed to state that
15 "a minor deviation" from the provisions of the 185th East/West
16 Plan was being sought. Petitioners claim this error is
17 significant because in granting a minor deviation, a zone is
18 changed. Petitioners say there are no standards for
19 distinguishing major changes from minor changes.

20 Lastly, petitioners claim that failure to post notice of
21 the board of commissioners' hearing for the time required under
22 Sections 2201-4.3 and 2201-2.4 renders the board without
23 jurisdiction. The ordinance sections require a ten day posting
24 of notice, and the posting was accomplished only for nine days.

25 This Board is only able to reverse a decision for failure
26 to follow procedural requirements when the petitioners are able

1 to show they have been prejudiced in some manner. 1979 Or
2 Laws, ch 772, sec 5(4), as amended by 1981 Or Laws, ch 748,
3 Frey Development Co. v Marion County, 3 Or LUBA 45 (1981). The
4 record clearly shows petitioners were afforded and did act upon
5 the opportunity to participate at each level of this approval
6 process. We do not understand how petitioners have been
7 prejudiced by any of the notice defects, even if we assume all
8 of them are true.²

9 Assignment of error no. 1 is denied as is petitioners'
10 motion for remand.

11 ASSIGNMENT OF ERROR NO. 2

12 "The findings and conclusions in this matter do not
13 show conformity with the applicable elements of the
14 Comprehensive Framework Plan, i.e. its maps and
15 policies, in violation of ORS 215.416(3) and (6) and
16 Sections 2201-3.3(b)(3) and 2201-4.8(a) of the zoning
17 article. Further, the findings and conclusions are
18 not supported by substantial evidence in the whole
19 record. Finally, interpretation of the community plan
20 so as to supersede the Comprehensive Framework Plan
21 violates State-wide Planning Goal 2 and Article I of
22 the Community Development Ordinance of Washington
23 County."

19 A. Applicable Plan

20 The first part of this assignment of error is devoted to a
21 challenge to the 185th East/West Plan. Petitioners claim the
22 185th East/West Plan is not coordinated with the Washington
23 County Comprehensive Framework Plan. Petitioners claim it is
24 the framework plan that is the controlling plan for the
25 county. Petitioners go on to assert that the zoning
26 designation given the site in the 185th East/West Plan is not

1 consistent with the "urban intermediate" designation given the
2 property in the comprehensive framework plan. As we understand
3 the argument, petitioners believe the change in zoning
4 designation violates the framework plan and particularly policy
5 no. 24 of the framework plan.³

6 Petitioners next assert that "supplemental" finding no. 4
7 of the county board's order brings in new evidence on the
8 relief of "Specially Regulated Areas" as designated by the
9 Metropolitan Service District (Metro) and the Land Conservation
10 and Development Commission (LCDC). See record, p. 77-78.
11 These "Specially Regulated Areas" were places in the urban
12 growth boundary that required particular protection from
13 urbanization. LCDC released the county from the burden of
14 these "SRAs" in the fall of 1982. Since the matter of
15 Specially Regulated Areas was not before the county planning
16 commission and the county board, and petitioners asked the
17 county to strike this information from its order, but the
18 county did not act on the request. Petitioners here argue that
19 this information prejudices the petitioners because they were
20 "blindsided" by its inclusion in the county's order, and they
21 ask we strike any references to the LCDC action.

22 For the reasons discussed under assignment of error no. 8,
23 *infra*, we will not review the 185th East/West Plan against the
24 comprehensive framework plan. We will, under part "B" of this
25 assignment of error, consider those policies in the
26 comprehensive framework plan that do apply to this development.

1 We will not strike the county's reference to LCDC's action
2 on the SRA designation. We do not believe it is important to
3 the issue of plan consistency. Also, we note the record shows
4 respondents' counsel made reference to the order during the
5 course of the proceedings before the county, and petitioners'
6 counsel was present at that meeting. We decline, therefore, to
7 strike the reference to LCDC's action from the county's order.

8 Whether this application violates Goal 2 is discussed infra
9 at assignments of error nos. 7 and 8.

10 B. Plan Policies

11 In the later part of petitioners' second assignment of
12 error, Comprehensive Framework Plan Policies 79, 82, 83, 84 and
13 112 are alleged to have been broken in various particulars.

14 Comprehensive Framework Plan Policy 79
15 (Environmental Quality Standards and Environmental
Impact Study Requirement).

16 Petitioners allege violation of policy 79 which states:

17 "Environmental quality standards will be given full
18 consideration in locating industrial development as
19 well as economic, social and technical factors and an
environmental impact study will be required."
20 Comprehensive Framework Plan at 110.

21 Petitioners advise the county has interpreted this policy as
22 not requiring an environmental impact statement for property
23 already planned and zoned for industrial use. Petitioners note
24 the county found:

25 "Furthermore, the applicant is required to submit
26 certification letters from water and sanitary sewer
providers and abide by Department of Environmental

1 Quality standards in developing the site. These
2 requirements satisfy the environmental impact
 assessment under Policy 79." Record, p. 57.

3
4 Petitioners allege the statement is inadequate on its face.

5 Petitioners posit the findings simply do not meet a clear call
6 for a full study of the economic, social and technical factors
7 involved in locating this development.

8 Respondents argue the county's interpretation has been that
9 no study is required where the property is already planned and
10 zoned for industrial use. Respondents add that service
11 providers have assured public service can be provided to the
12 site. Also the county found quality standards as set by the
13 Oregon Department of Environment Quality can be achieved. We
14 understand respondents to argue that even if the policy were
15 applicable, it has been satisfied.

16 We are uncertain as to whether Comprehensive Plan Policy 79
17 applies. We are cited to nothing in the "Industry" section of
18 the Comprehensive Framework Plan or in the 185th East/West Plan
19 that clarifies whether this requirement for an environmental
20 impact study applies to lands already zoned or planned for
21 industrial development or only to those lands which are
22 proposed to be designated for industrial development. The
23 policy talks about "locating industrial development," but it
24 appears with other plan policies that concern themselves with
25 criteria the county might use in designating industrial lands.
26 We therefore are uncertain as to whether the county plan is

1 talking about "locating" in the sense of designating property
2 or whether the county is talking about the placement of a
3 particular development. It is our view that the county is
4 entitled to interpret its ordinance where such ambiguity
5 exists, and we will not overturn that interpretation if it is
6 reasonable. Christian Retreat Center v. Washington County, 28
7 Or App 673, 560 P2d 1100 (1977); Tichy v. Portland, 6 Or LUBA
8 13 (1982). We believe this interpretation is reasonable, and
9 we hold that plan policy 79 does not apply to this development.

10 Prohibition of Compromise of the Plan's Integrity

11 Comprehensive Framework Plan Policy 82 states:

12 "The integrity of this Plan will not be compromised to
13 accommodate industrial growth."

14 Under this policy is an explanatory note cautioning against
15 poorly located industry that may cause premature development
16 and demand for services that exceed revenue from the industry.

17 Petitioners add the county has failed to meet the
18 requirements of ORS 215.416(6) in that the findings do not
19 explain how it is that the site will be served by required
20 urban facilities and services and "meets all the locational
21 factors set forth in other county policies."⁴ Record, p. 57.

22 Respondents argue the 185th East/West Plan documented that
23 services are available to the site, and it is the availability
24 of services that is the concern of policy 82.

25 As we understand the policy, it is a vague admonition to be
26 fully aware of the need for services and the existence of those

1 services before industrial growth is allowed. The county
2 findings show the county was aware of the policies and the
3 services needed to site this development. We decline the
4 invitation to find a breach of the plan's "integrity."⁵

5 Policy 83

6 "Urban services required by industrial development
7 will precede that development."

8 "As the placement of industrial land into a proper
9 zoning classification signifies a state of development
10 readiness, only those lands meeting the development
11 characteristics and critiera will be zoned for
12 industrial use." Comprehensive Framework Plan at 111.

13 Petitioners argue the county's finding of compliance with
14 this section is at variance with condition of approval B3A
15 requiring further information on traffic impacts from the
16 development before approval of the final master plan.

17 Petitioners note that Chapter 250 of the zoning article and
18 Growth Management Policy 5 in Ordinance 242 both require such
19 decisions to be made at this stage, rather than at the final
20 master plan stage. Petitioners cite the county's supplemental
21 findings as follows in support of their argument that not all
22 approval criteria have been satisfied.

23 "[W]ith the exception of the transportation system
24 servicing the subject the property [sic], all other
25 urban services are immediately available in sufficient
26 quantity and quality (based on communications for the
27 various service providers) in order to develop the
28 subject property for industrial use." Record, p. 76.

29 Respondents argue the county and the applicants have agreed
30 the precise nature of transportation improvements are to be

1 determined at a later public hearing. The planning commission
2 and county board construed county growth management policies as
3 permitting this approach, and the applicants have accepted "the
4 burden of an additional public hearing on these issues." Brief
5 of Respondents at 17. According to respondents, the
6 application approval at this stage is not permission for
7 development without additional submissions and approvals by the
8 county.

9 On its face, it appears that policy 83 is violated. We
10 base this conclusion on the county's apparent admission that it
11 has not yet determined the traffic impacts occasioned by the
12 development. The county findings state that further study of
13 potential traffic impacts is warranted. Record, p. 64. In the
14 supplemental findings at record page 78, the county states that
15 additional further public hearings will be held on
16 transportation and that development will not occur unless
17 traffic impact satisfies county standards. While it appears,
18 then, that a technical violation of policy 83 has occurred, the
19 fact that the county has undertaken to continue this proceeding
20 for the purpose of satisfying itself as to transportation is
21 not objectionable. We assume that with further public
22 hearings, petitioners and others will have the opportunity to
23 challenge a county decision on this issue should they believe
24 the decision to be adverse. We, therefore, believe it would be
25 overly technical to cite the county for a violation of policy
26 83 when the county's method of proceeding in this case will

1 meet the purposes behind policy 83 and insure that
2 transportation meets county standards before the development
3 occurs.⁶

4 Policy 84

5 "Land proposed for industrial use will be zoned by
6 stages to insure a gradual and orderly growth pattern.

7 "Sufficient land area will be zoned consistent with
8 the detailed community plans to support the industrial
9 needs of the county to the year 2000 as documented in
10 the 'Washington County Industrial Study' (adopted by
11 the Washington County Planning Commission on November
12 27, 1974, Resolution No. 74-17 or, as amended)."

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Petitioners claim this policy is violated because the whole
rationale for redesigning this area as urban, a requirement
prior to plan and zoning designations for industrial, is
lacking. Petitioners claim the rationale is apparent neither
in the findings in this case nor from the 185th East/West Plan
itself.

Respondents say

"a combination of the growth management policies and
the approach taken by the applicants with respect to
development of the subject property indicate total
compliance with policy 84." Brief of Respondents at
17.

We do not understand how it is that policy 84 is directly
applicable to this proceeding. The property has already been
zoned for industrial growth, and we understand the policy to
address zoning, not specific development. To the extent
petitioners challenge the zoning of the subject property, we
will discuss that issue under assignment of error no. 6.

1 Policy 112

2 "No major change in traffic flows will be undertaken
3 without full consideration for the air quality impact."

4 Petitioners say neither the supplemental statements of the
5 applicants, the 185th East/West Plan, nor the findings of the
6 county board show satisfaction of this policy. The findings at
7 record, p. 58-59 state only the air quality is regulated by the
8 government, but they do not set forth what the standards are or
9 how they will be met in light of an increase in traffic
10 occasioned by the development.

11 Respondents say the use of county growth management
12 policies relating to transportation and the regulatory
13 authority of the county and the state over air quality satisfy
14 policy 112. Respondents characterize the county's findings as
15 showing the opportunity to reduce auto trips and encourage mass
16 transit. Approval of the proposed outline master plan does not
17 place any more cars on roadways in Washington County, and
18 petitioners' reference to some 4,000 vehicle per day increase
19 is a "hypothetical and may never be attained." Brief of
20 Respondents at 18.

21 The county findings on policy 112 are as follows:

22 "(Air Quality and environmental issues affecting the
23 site): Industrial development is regulated by both
24 state and county standards relating to its
25 environmental impacts. After due consideration, the
26 site has been designated as Urban land by the regional
27 urban growth boundary and designated as industrial by
28 the 185th East/ West Community Plan. The concept of
29 placing employment centers close to residential areas
30 is specifically designed to lessen automobile trips

1 and reverse the current dependence on commuter traffic
2 to downtown Portland. The applicant's June 9
3 Supplemental Statement further documents compliance
4 with Policy 112. The encouragement of mass transit
5 opportunities by placing an 'anchor' in Eastern
6 Washington County is another outgrowth of the 185th
7 East/West Plan. The use of the 'balanced community'
8 concept will offer a better response to the
9 environmental impacts of development than a land use
10 pattern tied to traditional suburban growth concepts
11 premised upon commutes to employment and land uses
12 keyed to single-family residential development."
13 Record, p. 58-59.

14
15 The applicants' statement on air quality is as follows:

16 "The MA-1 zoning with which this project must comply,
17 specifically prohibits or limits objectionable,
18 hazardous or degrading noise, air, water, or solid
19 waste emissions. These standards are designed to
20 maintain a high quality environment.

21 "The designation of this site for industrial use
22 further enhances the environment of the county and the
23 immediate area by promoting a 'balanced community'
24 where the place of residence and the place of work are
25 in close proximity, thus reducing commute trips,
26 promoting the use of mass transit and counterflow
commute trips, which will reduce or minimize auto
exhaust emissions. In addition, specific building
permit applications which include parking for 50 or
more autos must receive an indirect source permit from
the Department of Environmental Quality (DEQ).
Standards for storm water retention and discharge
required by the County will be met or exceeded."
Record, p. 10.

27 Because matters of transportation are to be left to a
28 future public hearing, we are unable to determine whether there
29 will be a major change in traffic flow as a result of this
30 development. Without knowing whether a major change in traffic
31 flow will occur, we are not in a position to test the county's
32 findings as requested by petitioners.

1 We wish to note, however, that the findings do not appear
2 to discuss the air quality impact of this development. The
3 findings simply announce that an agency of the government
4 controls the standards and issues permits. These findings do
5 not explain what predicted traffic patterns will do to the air
6 quality of the area.

7 Because we understand that traffic matters will be taken up
8 at a further public hearing, we will consider the matter of
9 policy 112 to be up to county review at that time.

10 We deny this assignment of error because we understand the
11 deficiencies cited will be considered during a further public
12 hearing process.

13 THIRD ASSIGNMENT OF ERROR

14 "The county's findings and conclusions do not show
15 compliance with applicable provisions of its zoning
16 article, nor are such findings and conclusions
17 supported by substantial evidence in the whole record,
18 in violation of ORS 215.416(6) and secs. 2201-3.3(b)
19 and 2201-4.8 of the zoning article."

18 Chapter 2200

19 Petitioners assert that as a quasi-judicial application for
20 a planned unit development, the applicant must address
21 Washington County Zoning Article Section 2201, et seq. The
22 county must also show compliance with Chapter 250, and 1900 of
23 the zoning article. Petitioners note the county did not
24 include provisions of the conditional use regulations (Chapter
25 1900) in its statement of applicable standards appearing at
26 pages 47-48 of the record.

1 According to petitioners, the county explains away its need
2 to comply with Section 2201, et seq. of the zoning article as
3 follows:

4 "The application is in full compliance with the
5 applicable county standards in that the applicant has
6 submitted an industrial planned unit development
7 request for the subject property in accordance with
8 the requirements of the 185th East/West Plan. The
9 applicant's planned unit development application was
10 not a discretionary request and, therefore, the
11 applicant was not required to meet the customary
12 standards relating to whether a planned unit
13 development is appropriate for the site. An
14 industrial planned unit development is the only form
15 of development permitted for the site." Record, p. 49

16 Complementary findings are found in the Board of
17 Commissioners' supplemental findings as follows:

18 "1. The Application is in full conformity with
19 the mandated planned unit development designated
20 required by the 185th E/W Plan. The Outline Master
21 Plan clearly designates the subject property for
22 industrial use as part of an overall planned unit
23 development for the applicants' holdings between N.W.
24 Cornelius Pass Rd. and N.W. 185th Ave. (on the east
25 and west) and Sunset Highway and N.W. Walker and N.W.
26 Cornell Roads (on the north and south).

"2. Contrary to the appellants' assertion, the
applicants have not submitted merely 'any application
for a planned unit development.' The Application
submitted responds to all issues and policies
identified in the 185th E/W Plan.

"3. As indicated above, immediate development of
the site is both in the public interest and is of an
immediate need. This is again borne out by LCDC's
action in lifting the SRA designation from other
adjacent properties which presently lack water and
sewer services and which are currently more
urban-service deficient than the subject property.
The public interest in making available sites such as
the subject property for large-scale industrial/
employment use is of utmost public importance and
essential for the diversification of the regional and

1 state economies." Record, p. 81.

2
3 Petitioners argue these findings do not comply with Section
4 2201-3.3(b) of the zoning article and Section 2201-4.8 of the
5 zoning article.⁷ Further, they claim the findings do not
6 comply with the statement of facts and reasons required by ORS
7 215.416(6). Petitioners assert the land is being farmed and
8 should continued to be farmed until a public need for
9 conversion to other uses arises and adequate public facilities
10 are installed. Petitioners also argue the timing
11 considerations addressed in 2201-3.3(b)(1), (2) and (3) have
12 not been met.⁸

13 Respondents do not directly discuss the applicability of
14 Chapter 2200. Respondents rely on the county view that because
15 the 185th East/West Plan calls for the property to be developed
16 as an industrial PUD, there is no need to proceed with the
17 administrative provisions of the zoning article and to meet the
18 requirements and burden of proof therein. In other words, in
19 order to develop the property at all, a planned unit
20 development permit is required and making application for such
21 permit is a useless act.

22 We are cited to nothing in the Comprehensive Framework
23 Plan, the 185th East/West Plan or any ordinances that suggest
24 Chapter 2200 does not apply. It may be that meeting the burden
25 of proof detailed in Section 2201-3.3(b) is a foregone
26 conclusion because of plan policies and because of the

1 circumstances of the case, but the county needs to so explain
2 in its order. As it is, the county appears to have omitted
3 consideration of relevant criteria.

4 Chapter 250

5 As we understand the petitioners' complaint under this
6 subheading, Chapter 250 controlling planned unit developments
7 must be read together with the standards in Section
8 2201-3.3(b)(1) and (2). Further, findings are required under
9 provisions of Chapter 258-2 "Qualifying Conditions," and no
10 findings were made.

11 Respondents do not refer directly to the need for findings
12 under Chapter 250 and specifically Section 258 of the PUD
13 ordinance. The county findings do discuss Chapter 250 and
14 portions of Section 258 on page 53 and 54 of the record.
15 However, as to 258, only the policies appearing at 258-1.1, 1.2
16 and 1.3 are discussed. There is no discussion of Section 258-2
17 "Qualifying Conditions." These conditions are a list of
18 architectural, service and compatibility criteria.

19 "Washington County Code:

20 "Section 258-2 Qualifying Conditions. To qualify for
21 consideration as a non residential PUD the following
considerations shall be met:

22 "258-2.1 The proposed nonresidential PUD is designed
23 and will be developed with a unified architectural
treatment.

24 "258-2.2 Utilities, roads and other essential
25 services must be available for the immediate use of
occupants purchasing sites in the planned unit
26 development.

1 "258-2.3 Compatibility of site use with nearby
2 residential area must be evidenced and can be
determined in relationship to the following criteria:

3 "(a) Uses have no harmful or unpleasant effects
4 (noise, odors, fumes, glare, vibration, smoke,
5 vapors and gasses, electrical emissions, and
6 industrial wastes).

7 "(b) Traffic going to and from the planned unit is
8 permitted on nonresidential streets only; traffic
9 routes and exits from a district are far enough
10 away from houses so that truck noise and
11 vibration are not perceived.

12 "(c) The PUD site has direct access to an arterial or
13 collector street.

14 "(d) Appearance is harmonious. This feature would
15 include but not be limited to: landscaping,
16 enclosure of principal and accessory uses, height
17 control, sign control, low structural density,
18 and possibly architectural controls.

19 "(e) The distances separating all proposed uses and
20 buildings from the surroundings are great enough
21 to in fact constitute a buffer.

22 Loading docks and truck maneuvering areas and
23 terminals should be further removed from
24 residential lot lines than buildings, for
25 example."

26 It may be that 185th East/West Plan, Ordinance 242 and
other plan provisions dictate the use of this property.

However, there is nothing to which we are cited that
specifically excuses the county from addressing these criteria
in its final order. We are cited to no discussion of Section
258 (or equivalent criteria in the growth management policies
and 185th East/West Plan) that shows this section of the PUD
ordinance to have been met. We will not fish in the record in
order to catch evidence that might be pieced together into

1 findings showing compliance with applicable criteria. It is
2 the responsibility of the county to make adequate findings in
3 the first instance. If the county chooses to rely on existing
4 plans and ordinances and other information, the county must
5 clearly state that reliance with specific citations. South of
6 Sunnyside Neighborhood League v Clackamas County, 280 Or 3, 569
7 P2d 1063 (1977); Phillips v Coos County Board of Commissioners,
8 4 Or LUBA 73 (1981).

9 We sustain this assignment of error.

10 FOURTH ASSIGNMENT OF ERROR

11 "The conditions imposed are inadequate for the scale
12 of development proposed, unsupported by adequate
13 findings, and defer the issue of whether approval can
14 be granted even with conditions, while still granting
15 approval."

16 A. Insufficiency of the General Conditions of Approval

17 In this subassignment of error, petitioners attack the
18 conditions imposed on the applicants. The conditions
19 complained of include conditions about future application from
20 the same applicants and transportation matters. Petitioners'
21 complaint is generally that the county has insufficient
22 information to assess development impacts to decide whether or
23 not those impacts violate applicable standards.

24 Instead of answering the petitioners' claim directly,
25 respondents say the planning commission and the board of
26 commissioners have interpreted the growth management policies
as permitting the use of such conditions. That statement does

1 little to advise us as to whether or not the conditions are
2 properly those following initial determinations of project
3 feasibility, or whether the county impermissibly substituted
4 conditions for required findings. Edwards Industries v. County
5 Comm'rs of Washington County, 2 Or LUBA 91 (1981); Margulis v.
6 City of Portland, 4 Or LUBA 89 (1981).

7 Our review of the findings shows nothing to explain the
8 condition about no additional applications from the
9 applicants.⁹ However, we do not understand this condition to
10 have any particular effect on this development, at least the
11 petitioners do not explain to us what the effect is, and
12 therefore we find no error.

13 The county conditions about transportation are
14 impermissible because they appear to be used as a substitution
15 for findings required to show conformity with traffic
16 policies. However, as noted elsewhere in this opinion, the
17 county has concluded that it must entertain further public
18 hearings on the matter of transportation. Therefore, we will
19 not find the county at fault for imposing conditions about
20 transportation so long as further public hearings are indeed
21 conducted.

22 B. Growth Management Policies

23 Petitioners also challenge the validity of the findings
24 made on growth management policies. Petitioners note Growth
25 Management Policy 4(B) provides for denial of a land use
26 application if an acceptable level of essential services is not

1 insured. Petitioners claim that with respect to roads,
2 drainage and police protection, no evidence was presented at
3 all. Further, there is no finding (as required by policy 4(F))
4 that the cost of providing county urban services has to be
5 borne by the applicant unless otherwise authorized by the board
6 of commissioners.

7 Policy 4(B) states as follows:

8 "Essential Services are defined as: Schools, arterial
9 and major collector roads, on-site transit
10 improvements (such as bus shelters and turnouts, etc.)
11 and police protection. Failure to insure the
12 availability of an acceptable level of all essential
services within five (5) years depending upon the
degree of impact that the land use proposal has on the
unacceptable service(s) and the risks to public safety
in the interim period.

13 "The land use application will be denied when the
14 essential services can not be insured within the
15 required time period unless the following findings of
fact can be made:

- 16 "1. The particular unacceptable service(s) is not
17 necessary for the particular land use proposal
within the aforesaid five year period;
- 18 "2. The approval of the land use application will not
19 substantially interfere with the ability to later
20 provide the particular unacceptable service(s) to
anticipated land uses in the vicinity of the
subject property;
- 21 "3. The approval of the land use application without
22 the insurance of the particular unacceptable
23 service(2) will not cause a danger to the public
or residents in the vicinity of the subject
property; and
- 24 "4. It is shown that the applicant has exhausted all
25 practical methods within the ability of the
applicant to insure the provision of the
unacceptable service(s)." Record, p. 834-835.

1 Petitioners are not correct that the findings fail to discuss
2 schools and police protection. The county findings state:

3 "As indicated elsewhere, the proposed industrial use
4 can be served by all Critical Services (water,
5 sanitary sewer, drainage and local and minor collector
6 roads). Essential Services such as on-site transit
7 improvements and police protection can also be
8 provided to the site. There will be no negative
9 impact on the ability of the area schools to provide
10 service because no student population will e generated
11 by this development." Record 54.

12 Without particular citation from petitioners as to how it is that
13 these findings are not correct, we believe the county's statement
14 about schools and police protection is sufficient. See discussion
15 under Assignment of Error No. 8, infra.

16 As to the issue of transportation (on-site transit
17 improvements), we do not find error because further public
18 hearings should result in adequate public determinations about
19 transportation. If the determinations are not adequate,
20 petitioners have a remedy in a further appeal.

21 This assignment of error is denied.

22 FIFTH ASSIGNMENT OF ERROR

23 "The 'Minor Adjustment' was not the subject of proper
24 notice as required by law, nor approved pursuant to the
25 applicable procedural and substantive standards for plan
26 changes and zone changes."

27 The notice issues raised in this assignment of error were
28 discussed earlier.

29 Petitioners attack the zone change of 4 acres. Four acres were
30 redesignated as a "Minor Adjustment" permissible under the
31 provisions of Ordinance 242, Section 3(D)(2). Record, p. 830.

1 Petitioners complain there are no standards for such minor
2 adjustments. The following is the provision for such adjustments:

3 "The plan map shows specific boundaries for each use.
4 Minor adjustments of the specific boundaries may be
5 accomplished only through the provisions of the PUD
6 process. Major adjustments to the boundaries should
7 be treated as plan amendments." Record, p. 830.

8 Petitioners complain the county's action does not explain the
9 basis for the 4 acre change. Petitioners also complain that the
10 county's findings fail to make any distinction between minor and
11 major adjustments and fail to deal with any of the criteria for plan
12 amendments.

13 We disagree that there are no standards for minor adjustments.
14 As quoted above, Ordinance 242 provides such changes are to be
15 treated in the planned unit development process. As we understand
16 the provision, then, during the course of the planned unit
17 development approval process, minor changes in zoning may occur
18 where the county finds that some adjustment of a boundary is
19 necessary. In deciding whether an adjustment is necessary,
20 presumably the criteria applicable to approval of the PUD will
21 provide sufficient standards for the county, the applicant and
22 potential objectors to know whether the adjustment is indeed
23 appropriate. See Lee v. City of Portland, 3 Or LUBA 31 (1981); 57
24 Or App 798, 646 P2d 662 (1982). Additionally, the question as to
25 whether or not the change is truly minor or major can (and should)
26 be discussed during the course of the approval process.

The county's justification for the minor deviation is as follows:

"The applicant has sought approval of a deviation from

1 the 185th East/West Plan area zoned for MA-1 uses, by
2 moving the boundary of the MA-1 area to coincide with
3 the western edge of the Rock Creek drainageway.
4 Pursuant to ordinances 242 and 243, the Planning
5 Commission has the authority to make such minor
6 deviations in order to define and refine site specific
7 land use designations prescribed by the 185th
8 East/West Plan. The drainageway cannot be built upon
9 without an alteration permit. The proposed deviation
10 is found to be a minor one because of the small area
11 involved in the boundary shift. It is also beneficial
to overall site development to grant the proposed
boundary change because the flood plain represents a
natural break and forms a natural buffer between the
industrial uses and other non-industrial uses. This
minor deviation will also encourage use of the flood
plain for open space and amenity purposes. Therefore,
the Planning Commission finds the deviation request to
be minor in nature, beneficial to the public and
responsive to site development. It is hereby
approved." Record, p. 64.

12 We do not understand this finding to address planned unit
13 development criteria. There is a brief explanation as to why
14 the county believes the deviation to be "minor" and a statement
15 of the reason for the deviation, but the explanation is sketchy
16 and not detailed. There must have been some reason why the
17 county chose to process such deviations through the provision
18 of the PUD process. The county needs to explain which
19 standards apply and how they are met in this action. We note
20 the PUD process, contained in Chapter 250, includes standards
21 for four different kinds of PUDs. We are not told how this
22 explanation meets any of the standards. See Articles 252-1,
23 253-1.1-1.5, 255, 256, 257 and 258.

24 We sustain this assignment of error in part.

25 SIXTH ASSIGNMENT OF ERROR

26 "The designation of the subject parcel on the 185th

1 East/West Community Map and implementing zoning maps as
2 'Industrial/PUD' violates the Comprehensive Framework
3 Plan Map and Policy 24 thereof, ORS 197.175 and Goal 2."

4 In this assignment of error, petitioners advise the subject
5 property is designated "Industrial/PUD" in the 185th East/Plan
6 adopted under Ordinance 242 and 243. Petitioners say this
7 zoning was inconsistent with the overriding comprehensive
8 framework plan designation of "Urban Intermediate." This
9 inconsistency results in a violation of Goal 2, Article I,
10 according to petitioners.

11 We will not review the 185th East/West Plan for conformity
12 to the comprehensive framework plan. Petitioners had the
13 opportunity to challenge this community plan when it was
14 adopted. Also, we believe nothing exists in the county plan
15 and ordinance structure that renders unreasonable the county
16 view that the later 185th East/West Plan controls. The county
17 ordinance adopting the 185th East/West Plan states it is a
18 "plan." Further, the ordinance states that this new plan
19 "amends" portions of the comprehensive framework plan. See
20 Ordinance 242, record, p. 825-833. Where any inconsistency
21 exists between the two plans under these circumstances, we
22 believe the later and more specific plan controls. See
23 generally, 1A Sands, Sutherland, Statutory Construction, ch 22
24 (4th ed. 1972). Lastly, we were advised at the hearing on this
25 case that the county was nearing the time of adoption of a new
26 comprehensive plan. This new adoption may well render moot the
consistency, coordination and Baker v. Milwaukie, 271 Or 500,

1 533 P2d 772 (1975) issues raised here. We think, therefore,
2 little purpose would be served in reviewing the plans against
3 each other.

4 To the extent that petitioners attack the PUD as being based
5 in part on improper zoning, we believe we may conduct such a
6 review. We note "PUD District" provisions in Chapter 250 state:

7 "The specific uses of an requirements for land and
8 structure shall be those as listed within the primary
9 district for which are planned unit development
authorization is requested, except as may hereinafter
be specifically cited and approved under a PUD."

10 We question, however the usefulness of the inquiry. The
11 discussion of goal issues, infra, touches upon the framework
12 plan policy petitioners say is violated by the industrial
13 zoning, specifically plan policy 24. See footnote 3, supra.
14 Plan policy 24 is comparable to the growth management policies
15 in Ordinance 242 and to the urbanizable to urban conversion
16 factors in Goal 14. Therefore, we believe our discussions infra
17 about Goal 14 are sufficient to answer petitioners' concerns in
18 this assignment of error.

19 SEVENTH ASSIGNMENT OF ERROR

20 "The findings and conclusions in the final order do
21 not show compliance with state-wide planning goals 2,
22 4, 5 and 12, nor are the same supported by substantial
evidence in the whole record."

23 In general, petitioners argue the board's order lacks an
24 adequate factual base to show compliance with statewide
25 planning Goals 4, 5 and 12. Failure to show compliance with
26 Goals 4, 5 and 12 violates Goal 2, according to petitioners.

1 Goal 4

2 Petitioners claim Goal 4 was violated because soil maps and
3 the 1982 Framework Plan Resource Document (an inventory for the
4 new county plan) "demonstrate urban forest and characteristics
5 of the subject site * * * *" Petitioners cite soil studies and
6 evidence presented by opponents of the development. See
7 record, p. 740-758, 583, 459-460, 252-255, 128, 83-84, 34-36,
8 21-22. Petitioners claim the county's finding that Goal 4 was
9 adequately addressed during the adoption of the 185th East/West
10 Plan is insufficient. All the plan does is say the goal is
11 inapplicable because no forest land was included in Metro's
12 acknowledged urban growth boundary. Petitioners claim the
13 findings are inadequate as they fail to deal with the concept
14 of urban forest uses as discussed in the Board's opinion of
15 Constant v. Lake Oswego, 5 Or LUBA 311 (1982). Lastly,
16 petitioners claim the county's view that green belts, buffer
17 strips, open space and wildlife habitat will be preserved
18 through preservation of the flood plain created by Rock Creek
19 does not address Goal 4 adequately because the flood plain
20 regulation does not address Goal 4 values, and because the
21 flood plain regulations permit uses which conflict with Goal
22 4. See Washington County Zoning Article, Section 133 to 135.

23 Respondents say the county is correct in its findings that
24 there were no urban forests found in the 1982 Comprehensive
25 Framework Plan inventories. If there are urban forest uses
26 deserving protection in the area, the PUD process will permit

1 the county to address such issues. Respondents do not explain
2 why those issues are not addressed at the outlying plan stage.
3 Respondents simply deny the claim that the flood plan and
4 ordinance does not provide adequate protection and finally
5 characterizes petitioners' assertion as to Goal 4 to be based
6 solely on a reference in the record to the site suitability for
7 Douglas Fir growth.

8 The existence of Douglas Fir site class soils does not make
9 land into "forest lands" under Goal 4.¹⁰ However, the
10 inventories to the 1982 version of the framework plan cited by
11 petitioners show some forest land in the area of the subject
12 PUD. See Washington County Comprehensive Plan, Volume 1
13 "Resource Document," Figure 1-16. The apparent presence of
14 these forest lands is not explained. Also, we understand the
15 county appears to recognize the presence of open space and
16 wildlife habitat but says these resources will be preserved
17 through preservation of the flood plain created by Rock Creek.
18 Record, p. 51. The manner of this protection is not
19 explained. We are cited to nothing in the flood plan ordinance
20 to show how urban forest lands will be protected. We also
21 agree with petitioners that the flood plain and ordinance
22 appears to allow uses that may be inconsistent with Goal 4.

23 In short, it appears there are Goal 4 resource lands in the
24 project area and there are not sufficient findings to explain
25 away the apparent Goal 4 land or show how it will be adequately
26 protected or, indeed, be eliminated in favor of development.¹¹

1 GOAL 5

2 Petitioners argue as follows:

3 "The county used the 1982 Framework Plan Resource
4 Document as support for its Goal 5 conclusions, but
5 the inventories in that Plan showed a sensitive
6 wildlife habitat on the site, as indicated by
7 petitioners' at R. 22. Both the applicants'
8 Supplemental Jusitification (Finding III (A)(4) at R.
9 49) and the county's Supplemental Finding IV(2) at R.
10 84 deny the existence of any Goal 5 resource."
11 Petition for Review at 32.

12
13 Based upon this allegation, petitioners claim the county
14 was obliged to address Goal 5 to explain the discrepancy
15 between its Resource Document (we assume the 1982 Framework
16 Plan Resource Document) and its findings.¹²

17 The reference to page 22 of the record is to the following
18 statement in petitioners' petition for rehearing filed with the
19 county board:

20 "With respect to Goal 5, the applicants and the Board
21 indicate that the Rock Creek area is set aside. In
22 view of the narratives and figures found in the
23 resource documents for the new comprehensive plan,
24 petitioners note that no condition to 'set aside' such
25 lands has been imposed, nor has the Goal 5 conflict
26 resolution process nor development of a program to
meet the goal been undertaken in this application, or
its disposition by the Board in this case." Record,
p. 22.

27 Respondents deny there is any evidence in the record
28 showing a "sensitive wildlife habitat" on the property.
29 Respondents state that the Rock Creek Flood Plain which "comes
30 closest to such a habitat" has been designated by the county
31 and the applicants for a special "sensitive treatment."

1 Respondents say one of the reasons for making the minor
2 adjustment between the industrial and residential areas of the
3 PUD was to promote preservation and maintenance of the flood
4 plain area "its vegetation, water course and wildlife."

5 Petitioners have failed to show with particularity that a
6 Goal 5 resource exists on the site or near enough to the site
7 to be subject to protective measures. Where the county finds
8 no Goal 5 resource, it is up to the petitioners to show the
9 county is wrong before the county's findings may be put aside.
10 Lee v. Portland, 3 Or LUBA 31 (1981).

11 Goal 12

12 Petitioners claim county findings about transportation are
13 inadequate and in violation of Goal 12 (as well as Goal 2)
14 because they are insufficient to determine whether the project
15 should be approved, and the findings lack an adequate factual
16 base. Petitioners allege there is a failure to adequately
17 discuss transportation issues, and in particular petitioners
18 point to the following findings:

19 "Arterial and major collector roads (Essential Serices
20 [sic]) serving the site will be the subject of
21 continued study as the development proceeds through
22 the land use process. Conditions tying development to
23 necessary arterial and major collector improvements
24 represent an appropriate mechanism to provide the
25 assurances required by the Growth Management
26 Policies. These conditions also represent an
incremental approach toward matching actual
development needs with expenditure for public
imprvements so that neither is out of sequence with
the other. The county does not wish to over-commit
expenditures for such improvements well before their
actual need arises. By the same token, development
cannot occur if there are transportation system

1 deficiencies and the ability to provide necessary
2 improvements lags behind the impacts of development.

3 "Desirable Services (parks, public transit) will be
4 accommodated in further, more detailed planning for
5 the site. The flood plain has been earmarked for a
6 possible bikeway/pedestrian way following Rock Creek.
7 The site is linked to the overall mass transit plan
8 identified in the 185th East/West Plan, now under
9 study in the regional Westside Transit Corridor
10 deliberations." Record, p. 55.

11 Further, the record under the headings of "CONCLUSIONS OF
12 DEPARTMENT OF PUBLIC WORKS, V. CONCLUSIONS, ULTIMATE FINDINGS
13 AND CONDITIONS OF APPROVAL" Section B(3)a and b state:

14 "The following conditions relating to transportation,
15 pedestrian, bicycle, transit and storm drainage
16 facilities shall apply to the approval of this
17 application for an Outline Master Plan:

18 "a. Transportation concerns shall be addressed and
19 further conditioned to or at Final Master Plan
20 approval of any subsequent application. In so
21 approving the Outline Master Plan, it is found
22 that 1) insufficient information is available at
23 this stage to accurately assess impacts from this
24 development, and 2) no meaningful benefit would
25 accrue to the applicant by placing conditions
26 beyond those listed herein.

"b. Any liability or responsibility of the applicant
for right-of-way dedication or off-site road
improvements shall be limited to property under
the exclusive control of the applicant or the
county. More specifically, the applicant shall
not be responsible for constructing or bearing
the cost of improvements at the NW Cornelius Pass
Road interchanges with Sunset Highway (U.S.
Highway 26)." Record, p. 65-65.

Respondents characterize petitioners' contentions as a
reiteration of arguments made about the applicability of growth
management policies. Respondents defend by saying the 185th

1 East/West Plan included considerable transportation analysis
2 and ended with a recommendation of a mass transit alternative.
3 Respondents assert Goal 12 criteria show that the use of this
4 site as industrial property is precisely the kind of use
5 contemplated under Goal 12. Further, respondents say again
6 that

7 "A separate public hearing specifically focusing on
8 transportation improvements is part of the conditions
9 of approval of the Outline Master Plan. Given all of
10 these facts and circumstances, it is difficult to
11 understand how a Goal 12 violation has occurred.
12 Brief at Respondents at 30.

13 Presumably the further public hearing is the one referred to in
14 the county commissioners' supplementing findings calling for
15 further public hearings on transportation issues. See record,
16 p. 78.

17 While we can agree that the issue of adequate
18 transportation for the site is unsettled, we decline to find a
19 violation of Goal 12 under these circumstances. Goal 12 is
20 "[t]o provide and encourage a safe, convenient and economic
21 transportation system" and it appears that the county will
22 conduct further review of transportation issues in order to
23 achieve this goal. Under these circumstances, the purposes of
24 Goal 12 and whether this development meets those purposes is
25 subject to further scrutiny in a public hearing process. If
26 the goal is not achieved out of proceedings contemplated by the
27 county, this potential future error is subject to review by
28 this Board through the appeals process.

1 The Land Conservation and Development Commission at its
2 July 14-15 meeting modified this Board's opinion by adding the
3 following statement:

4 "It is our understanding that although a conditional
5 use permit has issued in this case, the permit itself
6 is conditioned upon a subsequent finding of compliance
with Goal 12 and that no development can occur until
such finding is made (see record, p. 65)."

7 Because the county has not shown an adequate factual base
8 for its conclusion about Goal 4, we find a violation of Goal 2.

9 This assignment of error is sustained in part.

10 EIGHTH ASSIGNMENT OF ERROR

11 "The grant of the application violates Goals 2 and 14
12 and ORS 215.416(6) and lack substantial evidence in
the whole record."

13 The basis of petitioners' complaint about Goal 14
14 compliance is that the county rests on the 185th East/West Plan
15 to show the goal has been met. Petitioners say the plan does
16 not meet the goal, therefore, this application is in violation
17 of Goal 14. Petitioners read the 185th East/West Plan to say
18 that growth management standards replace the Goal 14 process of
19 converting urbanizable to urban land. See record, p. 834-837.
20 The net effect of the policies, according to petitioners, is to
21 declare the whole of the urbanizable area within the 185th
22 East/West Plan as urban without meeting corresponding policies
23 of the comprehensive framework plan.

24 Petitioners concede that Ordinance 242 does provide a
25 procedure for timely, orderly and efficient processes of urban
26 public facilities and services. Petitioners claim, however,

1 that assurances of such a level of public facilities and
2 services in this case is deficient.

3 We believe petitioners are partially correct in that there
4 does not appear to be a clear indication that all public
5 facilities and services will be provided to the development.
6 There has not been a clear indication that adequate
7 transportation facilities are available. We do not find the
8 county to violate the goal, however, because of our
9 understanding that future public hearings will be held about
10 transportation.

11 Also, we agree that the county may not simply rely on the
12 185th East/West Plan and Growth Management Policies when faced
13 with a challenge not only to findings in support of this
14 development, but also to goal compliance in the underlying plan
15 and policies. However, we do not agree that the county has
16 failed to show compliance with factor 1 as alleged. The county
17 did hold that "critical services" including sewer and water
18 along with schools and police protection would be provided.
19 The county based these findings on "indications from service
20 providers." Record 81. We do not understand petitioners'
21 claim that these providers did not say that their respective
22 services would be furnished. Therefore, we believe the
23 county's findings that needed public services would be provided
24 are adequate on their face. Without a particular citation from
25 petitioners as to how it is that the findings are wrong, we
26 will not find the county to have committed error.

1 As to factor 2 in Goal 14 conversion factors of urbanizable
2 to urban land, we believe our holding may be controlled by an
3 order of the Land Conservation and Development Commission. On
4 October 1, 1982, LCDC issued an order modifying the urban
5 growth boundary for the Metropolitan Service District. That
6 order removes Goal 3 from consideration of uses on certain
7 lands within the UGB. These are the "Specially Regulated
8 Areas" referred to supra. These lands are not within the
9 subject site but are nearby. Removal of Goal 3 consideration
10 is limited to those properties where industrial use requires 30
11 or more acres. The order is accompanied by a statement that
12 may have a bearing on this case. The statement is as follows:

13 "Goal 14.

14 "The factors for conversion of urbanizable land are
15 satisfied for this proposal * * * *

16 "(2) 'Availability of Sufficient Land' for industrial
17 development 'to insure choice in the marketplace' is
18 met by the amendment in that choice of large lot
19 industrial land is now extremely limited in the Metro
20 region [sic] and this amendment will readily permit a
21 23 percent increase in the number of parcels and a 31
22 percent increase in the number of acres. Yet even
23 with this increase the Metro area would remain
24 considerably below, hence non-competitive with,
25 comparable metropolitan areas." Record, p. 92.

26 While this report and the accompanying order appears to
have been submitted and included by the county in its final
order without being available to petitioners for review and
comment, we believe it has relevance, and we may use the order
as a statement of the commission on factor 2 and Goal 14. That
is, even if petitioners have legitimate cause to complain about

1 the inclusion of this evidence in the county's order, the
2 commission's statement on the need for industrial land in
3 Washington County and how that need affects the second
4 urbanization criteria in Goal 14 for conversion of urbanizable
5 to urban land is something within the commission's view. As
6 such, it has a bearing on any Goal 14 question before this
7 Board and ultimately, the commission.

8 We take the staff report and the accompanying order to
9 represent the commission's view that the second criteria is
10 satisfied for the whole of the urban growth boundary.
11 Therefore, we have nothing to review with respect to the second
12 conversion factor. We may not second-guess the commission on a
13 matter of goal compliance. Byrd v. Stringer, 60 Or App 1, 652
14 P2d 1276 (1982).

15 As to Factor 3, consideration of LCDC goals, petitioners
16 attack the 185th East/West Plan's statement that it complies with
17 LCDC goals as being unsupported. This error renders this PUD
18 application without a showing of goal compliance, according to
19 petitioners.

20 We agree with petitioners because of our finding that the
21 county has failed to demonstrate compliance with statewide
22 planning Goal 4 as discussed in assignment of error no. 7, supra.
23 Because we find Goal 4 has not been met, we find compliance with
24 conversion factor 3 of Goal 14 has not been shown.

25 Petitioners go on to attack the decision under factor 4. This
26 factor requires the encouragement of development within urban

1 areas before conversion of urbanizable areas. Petitioners say
2 the 185th East/West Plan and this PUD grant lacks sufficient
3 explanation and detail showing compliance. To the extent
4 petitioners claim this PUD application does not show that it is
5 properly "urban" land under Goal 14, we will entertain
6 petitioners' challenge.

7 In this case, we are not cited to policies, maps,
8 inventories and other facts that show that this property is
9 indeed suitable for a "urban" designation under Goal 14.
10 However, it appears that the commission has conducted a review
11 of the factors and spoken on the matter. In the order of
12 October 1, the commission states:

13 "The data already cited reveals a severe lack of land
14 in the urban area suitable for immediate development
15 of large acreage industrial activity. At issue is the
16 option of providing immediate choice and opportunity
17 for large acreage industrial activity by a) substantial
18 investments in the urban areas of money to reduce
19 floodplain constraints or to provide sewers and/or
20 transportation facilities, or b) to remove planning
21 barriers and permit the conversion of this urbanizable
22 land that has sewer, water and transportation
23 facilities available. The latter is clearly the most
24 feasible, cost-effective method to satisfy the
25 immediate need." Record, p. 92.

26 Therefore, whether or not the county's findings or the
plans referred to in the findings show compliance with this
criterion, the commission during the course of its own
investigation and proceedings has found a lack of land suitable
for immediate development and has chosen "the option providing
immediate choice and opportunity for large acreage industrial *
* *" developments. Therefore, the county's compliance with

1 factor 4 of Goal 14 has already been demonstrated at least with
2 respect to large lot industrial developments within the Metro
3 urban growth boundary. We, therefore, find no violation of
4 Goal 14, factor 4.

5 To the extent that Goal 2 requires an adequate factual
6 base, and to the extent that the county's justification for
7 compliance with Goal 14 lacks an adequate factual base as
8 explained above, we find a Goal 2 violation as well as a Goal
9 14 violation.

10 This assignment of error is sustained in part.

11 This matter is remanded to Washington County for
12 proceedings not inconsistent with this opinion.

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FOOTNOTES

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They add the notice violates ORS 192.640(1) requiring that notices be "reasonably calculated to give actual notice to interested persons" of the matter at hand. This statute is part of the open meetings and records law. We make no finding on any potential violation of this law.

7 2

We agree with the petitioners that the posted notice was not posted for the required length of time under county ordinance, but the county ordinance does not make its notice procedures "jurisdictional." That is, the Washington County ordinance includes a number of requirements that it characterizes by its terms as "jurisdictional." See Section 2201-4.4 making failure to comply with county fee requirements "a jurisdictional defect," and Section 2201-4.9 requiring the filing of a petition for rehearing. Whether or not indeed these "jurisdictional requirements" would be treated on review as absolute requirements which, if not met, would end a proceeding or not is not important to our determination. What is evident from the county's ordinance structure is that it does not regard the strict adherence to its notice requirements with the same severity as it regards other procedural requirements.

Petitioners also argue that if this Board should find an exception to LCDC resource goals was required for this development, then the notice is defective in that it fails to state that a Goal 2 exception is to be taken. Goal 2, Part II, requires specific notice of such an exception be made, and failure to so state is reversible error. Rudd v Malheur County, 1 Or LUBA 322, 325 (1980).

We do not find a Goal 2 notice of exception required as no exception was required or attempted. Whether Goal 2 has been violated in some other manner is discussed, infra.

22 3

Policy 24 of the Framework Plan states

"Conversion of the intermediate area will be allowed upon proof that:

"(a) The change is in conformance with the Comprehensive Plan and also the goals and

1 policies of the Plan.

2 "(b) The change is in conformance with the factors set
3 forth in ORS 215.055, which have been consciously
4 considered.

5 "(c) The showing of public need for the urban area
6 extension and whether the public need is best
7 served by changing the classification on this
8 property under consideration.

9 "(d) The public need is best served by changing the
10 classification of the subject site in question as
11 compared with other available property.

12 "(e) The potential impact upon the area resulting from
13 the change has been considered an an
14 environmental assessment statement prepared."

15 _____
16 4
17 ORS 215.416(6) states:

18 "(6) Approval or denial of a permit shall be
19 based upon and accompanied by a brief statement that
20 explains the criteria and standards considered
21 relevant to the decision, states the facts relied upon
22 in rendering the decision and explains the
23 justification for the decision based on the criteria,
24 standards and facts set forth."

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27 We do not need to reach the matter of whether ORS
28 215.416(6) has been broken. We believe our discussions under
29 each assignment of error explains whether or not the county has
30 articulated the standards and made adequate findings.

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33 We add that no one has questioned whether there has been a
34 "final decision" on this application.

35 _____
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37 "The burden of proof is placed upon the petitioner seeking
38 an action pursuant to the provisions of this Chapter.
39 Unless otherwise provided for in this Article such burden
40 shall be to prove:

41 (1) Granting the request is in the public interest; the

1 greater departure from present land use patterns, the
2 greater the burden of the applicant;

3 "(2) The public interest is best carried out by granting
4 the petition for the proposed action, and that
5 interest is best served by granting the petition at
6 this time.

7 "(3) The proposed action fully accords with the applicable
8 map elements of the relevant Comprehensive Plan and
9 also the goals and policies of the plan.

10 "(4) The factors listed in ORS 215.055 were consciously
11 considered. These facts include:

12 "****the public health, safety and general welfare and
13 shall be based on the following considerations, among
14 others: The various characteristics of the various
15 areas in the county, the suitability of the areas for
16 particular land uses and improvements, the land uses
17 and improvements in the areas, trends in land
18 improvement, density of development, property values,
19 the needs of economic [sic] enterprises in the future
20 development of the areas, needed access to particular
21 sites in the areas, natural resources of the county
22 and prospective needs for development thereof, and the
23 public need for healthful, safe, aesthetic
24 surroundings and conditions.****"

25 "Proof of change in a neighborhood or community or mistake
26 in the planing or zoning for the property under
27 consideration are additional relevant factors to
28 consider." Section 2201-3.3(b), record, p. 816.

29 Section 2201-4.8 is about the county board's power to
30 affirm, reverse or amend a planning commission decision.

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Petitioners add that the reference in supplemental finding
II(3) at record page 81 to LCDC lifting the "SRA" designation
from adjacent properties is impermissible. We have already
discussed the county's use of this LCDC action.

9

"No additional applications will be approved for the
Standard Insurance Company and Park City Corporation.
Property east of Rock Creek (between Sunset Highway,
185th and Cornell) until a PUD/Master Plan has been
submitted for all the standard park and Park City

1 properties referenced above." Record, p. 65.

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3 Goal 4 defines Forest Lands as:

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

10
11 11

11 Whether or not forest land was included in Metro's
12 acknowledged urban growth boundary is not dispositive of
13 whether or not Goal 4 applies. We are aware of no provision in
14 the goals or administrative rule that renders Goal 4
15 inapplicable simply because of the existence of an acknowledged
16 urban growth boundary.

15
16 12

16 Goal 5 states:

17 "Programs shall be provided that will: (1) insure open
18 space, (2) protect scenic and historic areas and
19 natural resources for future generations, and (3)
20 promote healthy and visually attractive environments in
21 harmony with the natural landscape character. The
22 location, quality and quantity of the following
23 resources shall be inventoried:

- 24 "a. Land needed or desirable for open space;
25 "b. Mineral and aggregate resources;
26 "c. Energy sources;
"d. Fish and wildlife areas and habitats;
"e. Ecologically and scientifically significant
natural areas, including desert areas;
"f. Outstanding scenic views and sites;
"g. Water areas, wetlands, watersheds and groundwater
resources;
"h. Wilderness areas;
"i. Historic areas, sites, structures and objects;
"j. Cultural areas;

1 "k. Potential and approved Oregon recreation trails;
2 "l. Potential and approved federal wild and scenic
waterways and state scenic waterways.

3 "Where no conflicting uses for such resources have
4 been identified, such resources shall be managed so as
to preserve their original character. Where
5 conflicting uses have been identified the economic,
social environmental and energy consequences of the
6 conflicting uses shall be determined and programs
developed to achieve the goal."

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