

BEFORE THE LAND USE BOARD OF APPEALS

JUN 21 8 35 PM '89

OF THE STATE OF OREGON

WASHINGTON COUNTY FARM BUREAU,)
 and BRUCE HUGO,)
)
 Petitioners,)
)
 vs.)
)
 WASHINGTON COUNTY,)
)
 Respondent,)
)
 and)
)
 CITY OF FOREST GROVE,)
)
 Intervenor-Respondent.)

LUBA Nos. 88-104
88-105

FINAL OPINION
AND ORDER

Appeal from Washington County.

Neil S. Kagan and Keith A. Bartholomew, Portland, filed the petition for review, and Neil S. Kagan argued on behalf of petitioners.

Cheyenne Chapman and John M. Junkin, Hillsboro, filed a response brief, and Cheyenne Chapman argued on behalf of respondent Washington County.

David G. Frost, Hillsboro, filed a response brief and argued on behalf of intervenor-respondent City of Forest Grove.

HOLSTUN, Chief Referee; Sherton, Referee; participated in the decision.

REMANDED 06/21/89

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Holstun.

2 NATURE OF THE DECISION

3 Petitioners appeal an ordinance and a resolution amending
4 the county's acknowledged comprehensive plan (plan) and
5 adopting a new transportation plan (TPU).¹

6 MOTION TO INTERVENE

7 The City of Forest Grove (city) moves to intervene on the
8 side of respondent. There is no opposition to the motion, and
9 it is allowed.

10 FACTS

11 In a feasibility study initiated in 1986 (feasibility
12 study), the county considered the feasibility and impacts of
13 and alternatives for improved direct access from the cities of
14 Forest Grove and Cornelius to Sunset Highway. Such improved
15 direct access would provide improved access from Forest Grove
16 and Cornelius to urban areas located to the east, including the
17 City of Portland.

18 The study examined eleven alternative routes as well as a
19 "no build" alternative. The study recommended implementation
20 of portions of Alternatives 4 and 6 (Alternative 4/6).
21 Alternative 4/6 connects Forest Grove and Cornelius with Sunset
22 Highway via portions of the existing Martin, Verboort,
23 Cornelius-Schefflin, Zion Church and Glencoe Roads. Prior to
24 the county decision challenged in this proceeding, each of the
25 roads included in Alternative 4/6 was designated a collector,
26 with the exception of Glencoe Road, which was already

1 designated as an arterial.

2 The TPU adopted by the board of county commissioners in
3 October, 1988, approved the feasibility study's recommendation
4 and adopted a functional classification map showing the roads
5 of Alternative 4/6 as minor arterials.² In addition,
6 Alternative 4/6 is shown in the TPU as a through truck route
7 and is included in the TPU map showing recommended roadway
8 improvement projects.

9 INTRODUCTION

10 Our decision in this matter is complicated somewhat by
11 (1) uncertainty as to the legal effect of the county's decision
12 and (2) lack of clarity in the state's land use policy, as
13 reflected in the Statewide Planning Goals, concerning
14 transportation facilities connecting urban areas separated by
15 rural lands protected for resource use. We address each of
16 these topics briefly before turning to the assignments of error.

17 A. Legal Effect of the County's Decision

18 Petitioners argue the county's decision authorizes
19 expansion of the rights of way of the affected roadways from
20 the existing approximately 60 foot rights of way to 90 foot
21 rights of way. Petitioners also contend the county's decision
22 authorizes reconstruction and realignment of the affected
23 roadways which will result in acquisition of between 23 and 34
24 acres of Exclusive Farm Use (EFU) and Agriculture and Forest
25 (AF-20) zoned land.³ Citing the feasibility study,
26 petitioners further contend that one dwelling will be removed

1 and irrigation pipe must be moved in order to reconstruct the
2 affected roadways consistent with Alternative 4/6.

3 The county answers that the challenged decision simply
4 reclassifies existing roadways from major collectors to minor
5 arterials. In doing so, the county argues it is simply
6 recognizing the existing reality that traffic from Forest Grove
7 and Cornelius, destined for Portland, now utilizes these roads,
8 and other roads in rural areas to the north and northeast of
9 these cities, to travel to Sunset Highway and continue on to
10 Portland and other urban areas along Sunset Highway. The
11 county also argues its decision does not include the
12 feasibility study which, in part, constitutes findings in
13 support of the county's decision. We understand the county to
14 argue that although the feasibility study does propose
15 reconstruction and realignment of the roadways included within
16 Alternative 4/6, it is the appealed TPU that controls, and the
17 TPU says nothing about creating a new or realigned roadway,
18 creating new parcels, removing buildings or irrigation pipe or
19 widening the existing roadway.

20 Even if the county's decision is properly limited to the
21 provisions of the TPU, viewed in isolation from the supporting
22 findings, the county concedes its decision redesignates the
23 roads included in Alternative 4/6 as minor alterials. The
24 county also cites minimum road design standards adopted by
25 ordinance to establish road construction standards for each
26 functional classification. The minimum standards for a minor

1 arterial call for a 90 foot right of way, a paved width of 42
2 to 50 feet, three travel lanes and establish other minimum road
3 standards. Respondent's Brief App 19. We see nothing in the
4 amended TPU and the minimum design standards for minor
5 arterials that would preclude the county from improving the
6 roadways of Alternative 4/6 in the way petitioners fear they
7 will be improved, and in the way the feasibility study adopted
8 by the county recommends that these roadways be improved.

9 Although it may be, as the county argues, that the existing
10 EFU and AF-20 zoning does not explicitly allow the type of
11 roadway improvements petitioners describe, we do not believe
12 that eliminates the obligation for the county to address goal,
13 plan and code policies that may be implicated by its planning
14 decision designating the roadways of Alternative 4/6 as minor
15 arterials, for which minimum standards are provided in the
16 county's implementing ordinance.⁴

17 B. Applicable Goals

18 It seems obvious, as respondents point out, that with many
19 urban areas in Oregon physically separated by rural lands, that
20 transportation facilities primarily serving interurban area
21 travel (1) exist, (2) will need to be upgraded to accommodate
22 urban growth, and (3) periodically will need to be replaced or
23 supplemented with new interurban transportation facilities.
24 However, our review of the statewide planning goals discloses
25 no goal provision that clearly requires or allows construction
26 or expansion of urban transportation facilities outside urban

1 growth boundaries needed to provide interurban area
2 transportation.⁵

3 Respondents argue that the lack of recognition, or
4 inconclusive recognition, of transportation facilities
5 necessary to link urban areas should not be interpreted to mean
6 such facilities are prohibited by the goals. Respondents
7 contend interpreting the goals to prohibit such facilities
8 effectively means such facilities would be impossible.

9 However, as petitioners point out, it is possible a conscious
10 decision was made that the statewide planning goals not require
11 or allow urban levels of services such as transportation in
12 rural areas to connect urban areas. This does not mean such
13 facilities are impossible. It only means the exception
14 standards provided in Goal 2, Part II and ORS 197.732 must be
15 satisfied.

16 Of course, another possibility is that the apparent failure
17 to include explicit provisions in the statewide planning goals
18 to allow or require such interurban area transportation
19 facilities where appropriate, and to specify appropriate
20 standards for approving or planning such facilities, was simply
21 an oversight. Whether the omission was intended or
22 inadvertent, we are unable to locate anything in the statewide
23 planning goals that explicitly allows or requires urban
24 transportation services or urban levels of transportation
25 services outside urban growth boundaries.⁶

26 ///

1 FIRST ASSIGNMENT OF ERROR

2 "The county's decision to amend its acknowledged
3 comprehensive plan does not comply with the goals and
 lacks necessary findings."

4 SECOND ASSIGNMENT OF ERROR

5 "The county's decision to amend its acknowledged
6 comprehensive plan without justifying an exception to
7 the applicable goals misconstrued the applicable law,
 depended upon findings insufficient to support the
8 decision, and was not supported by substantial
 evidence in the whole record."

9 Petitioners argue that the county's decision to amend its
10 acknowledged comprehensive plan must comply with the goals,
11 citing Ludwick v. Yamhill County, 72 Or App 224, 231, 696 P2d
12 536, rev den 299 Or 443 (1985); ORS 197.175(2)(a). Petitioners
13 further contend that the county must, at the time the plan is
14 amended, adopt adequate findings to demonstrate goal
15 compliance. According to petitioners, the county is only
16 excused from this obligation where the goals do not apply to
17 the county's decision or exceptions are taken to excuse the
18 requirement that plan amendments comply with particular goals.

19 In their first two assignments of error, petitioners
20 contend the county failed to demonstrate that its decision
21 complies with Goals 3, 4, 11, and 14, and failed either to
22 demonstrate that those goals do not apply or to take an
23 appropriate exception to the goals. Petitioners acknowledge
24 that findings addressing the goals were adopted, but argue
25 those findings are simply conclusions not supported by adequate
26 findings of fact or by substantial evidence in the record. We

1 address each of petitioners' goal based objections separately
2 below.

3 A. Goal 3 (Agricultural Lands)

4 Goal 3 provides, as relevant:

5 "Agricultural lands shall be preserved and maintained
6 for farm use, consistent with existing and future
7 needs for agricultural products, forest and open
8 space. These lands shall be inventoried and preserved
9 by adopting exclusive farm use zones pursuant to
10 ORS Chapter 215. * * *"

11 "* * * * *"

12 Petitioners argue the land through which Alternative 4/6 passes
13 is admittedly agricultural land zoned for exclusive farm use.

14 As required by the above-quoted portion of Goal 3, a county
15 implements Goal 3 by planning agricultural land for farm use
16 and applying an EFU zone to those lands. Washington County has
17 a unified plan and zone map which designates the affected
18 property for exclusive farm use.⁷ The only significant
19 planning change adopted by the county in the TPU is to
20 designate the roadways of Alternative 4/6 as minor arterials.
21 In our view, the county's action violates Goal 3 and,
22 therefore, requires an exception to Goal 3 only if the
23 challenged TPU authorizes a use not potentially permitted in
24 exclusive farm use zones under ORS 215.213 and 215.283.⁸

25 Petitioners identify the following relevant provisions in
26 ORS 215.213 added by the legislature in 1987:

"(1) The following uses may be established in any area
zoned for exclusive farm use:

"* * * * *"

1 "(l) Climbing and passing lanes within the
2 right of way existing as of July 1, 1987.

3 "(m) Reconstruction or modification of public
4 roads and highways, not including the
5 addition of travel lanes, where no removal
6 or displacement of buildings would occur, or
7 no new land parcels result.

8 "* * * * *

9 "(o) Minor betterment of existing public roads
10 and highway related facilities, such as
11 maintenance yards, weigh stations and rest
12 areas, within right of way existing as of
13 July 1, 1987, and contiguous public-owned
14 property utilized to support the operation
15 of maintenance of public roads and highways.

16 "* * * * *

17 "(2) The following uses may be established in any area
18 zoned for exclusive farm use if the use meets
19 reasonable standards adopted by the governing
20 body:

21 "* * * * *

22 "(q) Construction of additional passing and
23 travel lanes requiring the acquisition of
24 right of way but not resulting in the
25 creation of new land parcels.

26 "(r) Reconstruction or modification of public
27 roads and highways involving the removal or
28 displacement of buildings but not resulting
29 in creation of new land parcels.

30 "(s) Improvement of public roads and highway
31 related facilities such as maintenance
32 yards, weigh stations and rest areas, where
33 additional property or right of way is
34 required but not resulting in the creation
35 of new land parcels.

36 "* * * * *." (Emphasis added.)

37 The parties apparently agree that the county proposes
38 through its plan amendment to reconstruct or modify the

1 roadways included in Alternative 4/6. ORS 215.213(1)(m) allows
2 such action outright, as long as no new travel lanes are added,
3 no buildings are displaced and no new land parcels are
4 created. ORS 215.213(2)(r) allows reconstruction or
5 modification of public roads and highways subject to compliance
6 with reasonable standards adopted by the county, even if new
7 travel lanes are added and buildings will be displaced or
8 moved, as long as no new land parcels are created.

9 Petitioners argue the authority provided in
10 ORS 215.213(1)(m) and 215.213(2)(r) allows reconstruction or
11 modification of roads only if no new right of way is required.
12 Because the county's decision clearly authorizes acquisition of
13 additional right of way, petitioners argue the decision is
14 inconsistent with these statutory provisions and requires a
15 Goal 3 exception. Petitioners note:

16 "When the legislature chose to allow the acquisition
17 of right of way, it said so expressly. See
18 ORS 215.213(2)(q) and (s). Had the legislature deemed
19 the acquisition of additional right of way permissible
20 for reconstruction, it would have said so in
21 ORS 215.213(2)(r), too. The absence of any such
22 authorization in ORS 215.213(2)(r) defeats the
23 county's argument. Therefore, the county's amendment
24 of the transportation plan implicates Goal 3."
25 Petition for Review 31-32.

26 We disagree with petitioners' interpretation of the absence
of an express reference to acquisition of additional right of
way in ORS 215.213(2)(r) to mean only reconstruction or
modification within existing right of way is allowed under that
provision. The express references to acquisition of additional

1 right of way in ORS 215.213(2)(q) and (s), which allow such
2 uses subject to reasonable conditions, parallels
3 ORS 215.213(1)(l) and 215.213(1)(o), which allow similar uses
4 outright as long as no additional right of way is required.

5 ORS 215.213(2)(r) parallels 215.213(1)(m). However, there
6 is no restriction to existing right of way stated in
7 ORS 215.213(1)(m) and, therefore, no reason explicitly to allow
8 acquisition of right of way in ORS 215.213(2)(r). As we
9 interpret ORS 215.213(1)(m) and 215.213(2)(r), they allow
10 "reconstruction or modification of public roads and highways,"
11 even if such action requires additional right of way. This
12 interpretation is supported by the limitation in both sections
13 proscribing creation of new land parcels. The only way new
14 land parcels could be created is if additional right of way is
15 acquired.⁹ The provisions of ORS 215.213(1)(m) and
16 215.213(2)(r) allowing reconstruction or modification of
17 roadways simply require that if additional right of way is
18 acquired, no new land parcels may be created.¹⁰

19 We conclude the county's decision is consistent with
20 Goal 3; and, therefore, no exception to that goal is required.
21 Petitioners' subassignment of error alleging violation of
22 Goal 3 is denied.

23 B. Goal 14 (Urbanization)

24 1. Designation of Alternative 4/6 as a Minor Arterial

25 The manner in which Goal 14 applies to lands located
26 outside acknowledged urban growth boundaries is not clear. The

1 problematic approach that is currently required to determine
2 whether rural land may be put to a use that is arguably urban
3 is discussed at length in the Oregon Supreme Court's decision
4 in 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447,
5 498-511, 724 P2d 268 (1986). First, it is necessary to
6 determine whether the use proposed is urban or rural.¹¹ This
7 determination presents obvious problems because most land uses
8 are neither inherently urban nor inherently rural. Many uses
9 exist in both urban and rural areas as either primary land uses
10 or uses needed to enable or support other rural or urban land
11 uses. For uses that are neither inherently urban nor
12 inherently rural, application of Goal 14 proceeds on a case by
13 case basis under current opinions by this Board and the
14 appellate courts.¹² The Oregon Supreme Court stated in its
15 Curry County decision:

16 "We reiterate that the interpretation of 'urban uses'
17 is primarily for LCDC, subject to judicial review only
18 for consistency with the statutes authorizing LCDC to
19 adopt the goals and with the policies of the goals
20 themselves. LCDC, however, must develop some
21 interpretation of 'urban uses,' either by formulating
22 a general definition or by elaborating the meaning
23 ad hoc from case to case. LCDC may even choose to
24 address that issue and other definitional problems
25 noted in this opinion by amending the goals,
26 guidelines, or definitions in accordance with
ORS 197.235 to 197.245, or by promulgating new or
amended administrative rules, in accordance with
ORS Chapter 197 and ORS 183.325 to 183.410." Id. at
521-522.

24 However, at this time, LCDC has not adopted administrative
25 rules or goal amendments to provide (1) a more workable or
26 certain way to determine when a use is urban and requires an

1 exception to Goal 14 to be located on rural land; or
2 (2) another way to distinguish between uses that must be
3 located within urban growth boundaries and uses that may be
4 allowed on rural lands without an exception to Goal 14.¹³ We
5 do not minimize the difficulty of providing greater clarity and
6 certainty to the application of Goal 14 outside urban growth
7 boundaries. However, the existing complexity and uncertainty
8 of Goal 14's application outside urban growth boundaries cannot
9 be denied. See, e.g., Schaffer v. Jackson County, ___ Or
10 LUBA ___ (LUBA No. 88-029, August 11, 1988) (asphalt batch
11 plant); Holland v. Lane County, ___ Or LUBA ___ (LUBA
12 No. 87-106, April 13, 1988) (5 and 10 acre residential zoning);
13 Loos v. Columbia County, ___ Or LUBA ___ (LUBA No. 87-103,
14 April 1, 1988) (wood products remanufacturing); Allum v. Polk
15 County, 13 Or LUBA 257 (1985) (office building); Gordon v.
16 Clackamas County, 10 Or LUBA 240 (1984) (airport).

17 Turning to the TPU challenged in this proceeding, it is not
18 disputed the decision was adopted to allow improvement of the
19 rural roadways included within Alternative 4/6 to more
20 efficiently accommodate travel between Forest Grove/Cornelius
21 and Portland.

22 Although it is true that additional traffic along these
23 roads may result, at least in the short run, in less interurban
24 travel on other nearby rural roads, this does not negate the
25 obvious conclusion that the disputed improvements allowed by
26 the TPU are intended to accommodate urban travel needs. We

1 conclude this part of the TPU either (1) allows an urban use of
2 rural land and, therefore, requires an exception to
3 Goal 14;¹⁴ or (2) requires an explanation of why the state
4 policy embodied in Goal 14 is not offended by the county's
5 action, because it does not allow a proscribed urban use of
6 rural land.

7 We do not understand the county to argue that
8 Alternative 4/6 would have been designated a minor arterial,
9 but for the need to accommodate essential travel needs between
10 the Forest Grove/Cornelius urban areas and the City of
11 Portland. As the Oregon Supreme Court explained:

12 "In practice, once an objector has charged that a
13 decision affecting 'rural land' outside an urban
14 growth boundary is prohibited by Goal 14, a local
15 government may do any one of three things: (1) make a
16 record based on which LCDC enters a finding that the
17 decision does not offend the goal because it does not
18 in fact convert 'rural land' to 'urban uses';
19 (2) comply with Goal 14 by obtaining acknowledgment of
20 an urban growth boundary, based upon considering the
21 factors specified in the goals; or (3) justify an
22 exception to the goal." 1000 Friends of Oregon v.
23 LCDC (Curry County), 301 Or at 477.

24 If the county's action allows an urban use of rural land,
25 an exception to Goal 14 is required, and a remand would be
26 necessary. If the county's action does not "convert rural land
to urban use," within the meaning of Goal 14 and the Supreme
Court's decision in Curry County, the rationale for that
conclusion must come from the county. The county's position is
essentially (1) it is merely recognizing reality, (2) roads are
neither inherently urban nor inherently rural, (3) nothing in

1 Goal 14 expressly provides that highways to serve the needs of
2 physically separated urban areas require an exception to
3 Goal 14, and (4) even if an exception to Goal 14 is required,
4 the proper time to take the exception is when approval of the
5 actual construction of the improvements occurs.

6 As explained supra, the county has planned the roadways of
7 Alternative 4/6 as minor arterials primarily to accommodate
8 interurban traffic. The time to explain why that planning
9 decision complies with Goal 14, or to take an exception to
10 Goal 14 to allow an urban level use on rural land, is the time
11 the plan is amended to adopt that planning decision. See 1000
12 Friends of Oregon v. Washington County, ___ Or LUBA ___, (LUBA
13 Nos. 88-106/107/108, May 5, 1989) slip op 10-12. We find the
14 county's explanation inadequate to demonstrate that Goal 14
15 does not apply to the county's decision to designate the
16 roadways of Alternative 4/6 as minor arterials.

17 However, although we agree with petitioners that an
18 exception to Goal 14 or an explanation for why Goal 14 does not
19 apply would ordinarily be required, our decision that the
20 proposed use is specifically allowed under Goal 3 and
21 ORS 215.213(1) and (2) requires a different result in this case.

22 The statutory EFU zone provisions, read together with
23 Goal 3, explicitly allow on EFU zoned land a variety of uses
24 that are not farm uses. In addition to the roadway
25 improvements discussed supra, such uses as public and private
26 schools, churches, utility facilities, solid waste disposal

1 sites, community centers, playgrounds, campgrounds, golf
2 courses, commercial power generating facilities, and
3 destination resorts are allowed by ORS 215.213 or 215.283
4 either outright or subject to reasonable county imposed
5 conditions. While it is possible that the legislature intended
6 to allow the listed uses only if such uses are also rural in
7 scale or appropriately limited to serve the immediate rural
8 area, we are cited nothing and find nothing in the statutory
9 scheme or language to suggest that the legislature intended EFU
10 zone uses to be so limited. Specifically, we find no such
11 limiting language in the statutory provisions allowing
12 reconstruction or modification of public roads and highways or
13 other uses that clearly may serve an urban clientele, in whole
14 or in part. As we explained in Hammack v. Washington County,
15 supra:

16 "We find that [uses allowed in ORS 215.213] can and do
17 generate impacts that are urban in nature and may
18 require services and facilities that are urban in
19 nature. The fact that they are allowed in an EFU zone
20 does not mean they are rural. It simply means the
21 legislature apparently made a policy decision, these
22 uses may be a permissible use of rural EFU lands."
23 Id. slip op at 9.

24 The plan amendment allows only a use that is specifically
25 allowed by ORS 215.213(1) and (2). We conclude the legislature
26 intended to allow counties to permit the uses it specified in
ORS 215.213(1) and (2) without the additional requirement,
unexpressed in the language of the statute, that the use be
rural or an exception to Goal 14 be taken.¹⁵

1 2. Amendment of Policy No. 23

2 Petitioners also argue that prior to the county's decision
3 Plan Policy No. 23 provided as follows:

4 "It is the policy of Washington County to develop and
5 maintain a rural transportation system which will
6 minimize capital investments, and recognize and
7 preserve the distinction between urban and rural areas
while efficiently serving the agricultural and forest
based economy of the county." Rural/Natural Resource
Plan for the Rural Area.

8 As amended by the county's decision, Policy No. 23 now
provides as follows:

9 "It is the policy of Washington County to regulate the
10 existing transportation system and to provide for the
11 future transportation needs of the county through the
12 development of a transportation plan as an element of
the comprehensive plan." Record Exhibit 118,
unnumbered p. 16.

13 Petitioners argue that Policy No. 23 as amended eliminates
14 the requirement that the county limit transportation facilities
15 to the level needed to accommodate rural development where the
16 facility is located. Petitioners contend that Policy No. 23 as
17 amended contains no prohibition on urban transportation
18 facilities outside urban growth boundaries and therefore
19 violates Goal 14.

20 Under the third assignment of error, we conclude Policy
21 No. 22, which remains a part of the county's plan, requires
22 that the county limit its public facilities and services to the
23 level required to support rural development. Thus, the land
24 use planning policy in Goal 14 is implemented in Policy No. 22;
25 and, therefore, the county's deletion of that consideration
26 from Policy No. 23 provides no basis for reversal or remand.

1 Petitioners' subassignment of error alleging the county
2 erred by failing to comply with, or take an exception to,
3 Goal 14 is denied.

4 C. Goal 11 (Public Facilities and Services)

5 As petitioners correctly argue, Goal 11 requires

6 "[u]rban and rural development shall be guided and
7 supported by types and levels of urban and rural
8 public facilities appropriate for, but limited to, the
9 needs and requirements of the urban, urbanizable and
10 rural areas to be served. * * *"

11 In the situation presented in this case, i.e., construction
12 of an urban level transportation facility on rural EFU zoned
13 land to serve urban areas separated by rural EFU zoned land, we
14 are uncertain any prohibition in Goal 11 is violated. Goal 11
15 clearly proscribes provision of an urban level facility in a
16 rural area to serve rural users. Goal 11 also would presumably
17 prohibit location of such an urban type facility on rural land
18 to serve urban users if alternatives existed to provide for
19 urban transportation needs in a way that eliminated or
20 minimized the need to extend such services across rural land.
21 Even if such alternatives did not exist, it may be that a
22 Goal 11 exception would be required to allow such urban
23 services and facilities.

24 However, for the same reasons we conclude, supra, that
25 Goal 14 does not apply to the part of the county's decision
26 challenged in this proceeding, we conclude Goal 11 is not
27 offended by the county's decision. We do not necessarily mean
28 to say that uses allowed in the EFU zone must be provided

1 levels of service that would otherwise violate Goal 11 or that
2 provision of such services to EFU zone uses could not be
3 appropriately limited, pursuant to Goal 11 or plan policies
4 implementing Goal 11, to minimize impacts on surrounding rural
5 areas. However, in this case, the use allowed by the EFU zone
6 is the public service or facility itself. The legislature
7 specifically provided for this use in the EFU zone with no
8 express limitation on the level or intensity of use or the
9 source of its intended users. We conclude the legislature did
10 not intend in ORS 215.213(1) and (2) and 215.283(1) and (2) to
11 authorize only those identified transportation facilities and
12 improvements that are needed to provide service to adjoining
13 EFU zone uses.

14 D. Goal 4 (Forest Lands)

15 The roadways encompassed by Alternative 4/6, as explained
16 supra, are constructed on agricultural lands subject to Goal 3
17 and zoned EFU. Although land zoned AF-20 also contains some
18 interspersed lands that would otherwise be entitled to
19 protection under Goal 4, we reject petitioners' suggestion that
20 an exception to Goal 4 is required by the county's decision.
21 First, petitioners do not identify any forest lands affected by
22 the decision. More importantly, the application of the AF-20
23 zone (which we have noted previously is an EFU zone) to the
24 subject property is not an issue in this appeal. In situations
25 where there is farm land interspersed with some forest lands,
26 the county is not required to apply one resource designation

1 rather than another. OAR 660-05-010(5); 660-06-015(1). Having
2 made the election to protect the disputed land as provided
3 under Goal 3, a Goal 4 exception is not required.

4 Petitioners' subassignment contending the county erred by
5 failing (1) to demonstrate compliance with Goal 4, or (2) to
6 take an exception to Goal 4 is denied.

7 The first and second assignments of error are denied.

8 THIRD ASSIGNMENT OF ERROR

9 "The county's decision to amend its acknowledged
10 comprehensive plan is not consistent with the
11 acknowledged comprehensive plan and land use
12 regulations, misconstrued the applicable law, lacked
13 necessary findings, depended upon findings
14 insufficient to support the decision, and was not
15 supported by substantial evidence in the whole record."

16 A. Consistency with AF-20 and EFU Zones

17 Petitioners contend that reconstruction and realignment of
18 roads, although included as a use in the statutes authorizing
19 counties to adopt exclusive EFU zones, is not included in the
20 county's adopted EFU and AF-20 zones. Petitioners acknowledge
21 that the county's EFU and AF-20 zones allow public utility
22 facilities,¹⁶ but dispute the county's position that roads
23 and streets may be viewed as public utility facilities.

24 Petitioners are correct that the county's EFU and AF-20
25 zones do not identify, as permitted or conditional uses, the
26 highway related improvements authorized in ORS 215.213(1)
and (2), discussed supra. As we explained in McCaw
Communications v. Marion County, ___ Or LUBA ___ (LUBA
No. 88-068, December 12, 1988), slip op 27-28, n 10, rev'd on

1 other grounds ___ Or App ___ (1989), the statutory authority
2 for counties to adopt exclusive farm use zones is enabling
3 rather than mandatory.¹⁷ ORS 215.203(1) provides:

4 "Zoning ordinances may be adopted to designate areas
5 of land within the county as exclusive farm use
6 zones. Land within such zones shall be used
7 exclusively for farm use except as otherwise provided
8 in ORS 215.213 or 215.283. Farm use zones shall be
9 established only when such zoning is consistent with
10 the comprehensive plan." (Emphasis added.)

11 We do not read ORS 215.203(1) to apply the provisions of
12 ORS 215.213 or 215.283 to county EFU zones automatically.
13 Neither do we interpret ORS 215.203(1) to require counties to
14 adopt ORS 215.213 and 215.283 word for word. Rather,
15 ORS 215.213 and 215.283 establish minimum standards for an EFU
16 zone. The county is required to adopt an EFU zone or zones
17 that satisfy the minimum requirements of ORS 215.213 or
18 215.283, but is not precluded from adopting an EFU zone that is
19 more restrictive than the statute allows. See 42 Op Att'y
20 Gen 77, 82 (1981).

21 We also agree with petitioners that the county is not a
22 public utility as that term is defined in the CDC, and the plan
23 for roadway improvements may not be considered a public utility
24 facility as the county argues. The operative language in the
25 CDC definition of public utility most favorable to the county's
26 position is as follows:

27 "Any corporation, including municipal or
28 semi-municipal corporation * * * that owns or operates
29 any plant or equipment * * * for the transportation of
30 persons or property by street, railroads or other
31 street transportation or common carriers * * *."

1 Although the county may be properly viewed as a public
2 utility in some capacities where it provides services utilizing
3 streets, we do not interpret the above definition to include
4 its capacity as a provider of streets. We also do not read the
5 county's definition of public utility services facilities to
6 include county streets. See n 16, supra.

7 Until Washington County amends its EFU and AF-20 zones to
8 take advantage of the authority granted in ORS 215.213(1)
9 and (2), the highway improvement uses authorized in those
10 sections are not allowed in the county's EFU and AF-20 zones.

11 Although we agree with petitioners that the EFU and AF-20
12 zones currently applied by the county to the disputed roadways
13 do not allow the planned for improvements, we do not believe
14 such a plan/zone inconsistency automatically requires remand as
15 petitioners assume. Plan designations frequently envision more
16 intensive uses than those currently authorized by the current
17 implementing land use regulations. See, e.g., Clinkscales v.
18 City of Lake Oswego, 47 Or App 1117, 1121, 615 P2d 1164, rev
19 den 289 Or 74 (1980); Greb v. Klamath County Comm'rs, 32 Or App
20 39, 44, 573 P2d 733 (1981); Marracci v. City of Scappoose, 26
21 Or App 131, 133, 552 P2d 552 (1976).

22 We will not develop an argument for petitioners that the
23 county's failure to apply an implementing land use regulation
24 that would presently allow the planned for improvements
25 constitutes the kind of plan/land use regulation discrepancy
26 that would warrant remand.¹⁸ This subassignment of error is

1 denied.

2 B. Plan Policies

3 Plan Policy No. 22 provides as follows:

4 "It is the policy of Washington County to provide
5 public facilities and services in the rural/natural
6 resource area in a coordinated manner and at levels
7 which support rural type development but which do not
8 induce urban level development, are efficient and cost
9 effective and help maintain public health and
10 safety." Rural/Natural Resources Plan for the Rural
11 Area.

12 Petitioners contend the county's adoption of Alternative
13 4/6 is inconsistent with Policy No. 22. Petitioners point to
14 testimony in the record suggesting the urban traffic that would
15 be accommodated by improvements to Alternative 4/6 will create
16 pressures to rezone adjacent EFU and AF-20 zoned lands to
17 accommodate rural residential, commercial and industrial uses.
18 Record 291. Petitioners also argue the county failed to find,
19 and the record would not support a finding, that the selection
20 of Alternative 4/6 is consistent with Policy No. 22.

21 Respondent answers as follows:

22 "As discussed previously, the recognition of
23 functional classes and needed improvement projects as
24 part of a transportation planning process is one basic
25 method of assuring coordinated, efficient, cost
26 effective and safe roadways. Neither the study, nor
the selection of alternatives attracts commuters
through the rural area, or induces urban growth or
secondary development in the rural area."
Respondent's Brief 18.

27 We note that the county's findings discuss possible impacts
28 of the selection of Alternative 4/6 on farming practices.
29 Record Exhibit 116, p. 18. In that discussion, the county

1 suggests that improving Alternative 4/6 will have the
2 beneficial impact of providing a wider shoulder to minimize
3 farm vehicle/auto conflicts and will reduce non-local traffic
4 on other rural roads in the area. The feasibility study, also
5 adopted by the county as findings, explicitly recognizes the
6 potential for secondary development that petitioners contend
7 violates Policy No. 22. The findings state in part:

8 "As the Portland metropolitan area, Washington County,
9 and the Cornelius/Hillsboro/Forest Grove area
10 continues to grow, there will be greater pressure to
11 change rural land to urban uses and to split up viable
12 farming units to make 'hobby' farms. Focusing travel
13 between the Sunset [Highway] and Forest
14 Grove/Cornelius onto one route may increase this
15 pressure in the vicinity of this route, however it
16 would be difficult to determine whether the cause of
17 the pressure would be the highway or simply the
18 proximity of the area to the urbanized area."
19 Record 565.

20 Although the above quoted finding does not explicitly
21 mention Policy No. 22, we believe the finding recognizes and
22 addresses the prohibition embodied in that policy. Policy
23 No. 22 prohibits urban levels of public services in rural areas
24 that may induce urban development or secondary growth. The
25 finding appears to concede that implementation of Alternative
26 4/6 may induce such development, and the finding is, therefore,
inadequate to demonstrate Policy No. 22 is satisfied.

Much of our discussion concerning the lack of relevant,
focused treatment of urban level transportation facilities on
rural lands in the statewide planning goals is equally
applicable to the county's comprehensive plan and implementing

1 land use ordinances. Policy No. 22, fairly read, proscribes
2 the level of service the county proposes. In its finding, the
3 county appears to recognize its action may have precisely the
4 effect of encouraging urbanization pressures on adjoining rural
5 EFU and AF-20 zoned land that is proscribed by Policy No. 22.
6 It may be that the county can adopt findings that adequately
7 explain why the apparent prohibition in Policy No. 22 is not
8 violated by the proposed road improvements, but the county
9 fails to identify any such explanation in the findings
10 supporting its decision. It also may be that other plan
11 policies, when read with Policy No. 22, could provide the basis
12 for adequate findings explaining why Policy No. 22 is not
13 violated. However, the county must identify any such policies
14 and adopt any such explanatory rationale in the first
15 instance.¹⁹

16 This subassignment of error is sustained.

17 The third assignment of error is sustained, in part.

18 The decision of the county is remanded.

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FOOTNOTES

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5 The county's comprehensive plan includes a number of
6 separate elements -- including (1) the Comprehensive Framework
7 Plan and Community Plans for the Urban Area; (2) the
8 Rural/Natural Resource Plan for the Rural Area; and (3) the
9 Transportation Plan. According to the county, the new
10 Transportation Plan adopted in part by the decision challenged
11 in this appeal consolidates transportation policies and maps
12 previously contained in other plan elements into a single plan
13 element and adopts new maps and policies. Respondent's Brief
14 14. Petitioners' challenge is almost exclusively directed at
15 the new Transportation Plan.

16 We shall refer to the new Transportation Plan as the
17 Transportation Plan Update (TPU) to distinguish it from other
18 elements of the plan. The TPU is included in the record as
19 Oversized Exhibit 118. The record also includes a published
20 version of the TPU that is easier to read and use. Our
21 citations in this opinion are to the published TPU, which is
22 titled "Comprehensive Plan Volume XV - Washington County
23 Transportation Plan."

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2

Minor arterials are described in the TPU functional
classification system as follows:

"Minor arterials are intended to serve as the primary
route for travel within and between community subareas
and to augment the major arterial system. Access to
minor arterials will be primarily from the collector
system." TPU Figure 7.

Major collectors are described as follows:

"Major collectors are intended to serve traffic from
local streets to arterials and are public
thouroughfares [sic] with a lesser degree of present
or future traffic than an arterial." Id.

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As far as we can tell, with two possible minor exceptions,
the rural portion of Alternative 4/6 challenged in this
proceeding is zoned EFU and AF-20. Both the EFU and AF-20

1 zones are exclusive farm use zones as defined in ORS 215.203
2 through 215.337. Washington County Community Development Code
3 (CDC) Sections 340-1; 344-1. The minor exceptions include:
4 (1) small areas to the east of Cornelius Road, zoned
5 Agriculture and Forest - 5 and Agriculture and Forest - 10, and
6 (2) a small area north of Schefflin Road, zoned Rural
7 Industrial. In both cases, the land on the opposite side of
8 Cornelius and Schefflin Roads is zoned EFU or AF-20. In their
9 petition for review, petitioners appear to assume the existing
10 right of way for Alternative 4/6 is zoned AF-20 or EFU. We
11 cannot be sure such is the case where differently zoned
12 property adjoins a road on one side. However, for lack of a
13 better alternative, we shall assume, as the parties apparently
14 do, that the affected roads are zoned AF-20 or EFU.

8 There is one other area, where Glencoe Road joins Sunset
9 Highway, where the Alternative 4/6 roadway passes through land
10 zoned Rural Commercial, Rural Industrial and Rural
11 Residential. However, Glencoe Road was designated an arterial
12 prior to adoption of the TPU, and that designation is not
13 changed by the county decision challenged in this proceeding.

12 _____
4

13 We note that even if the existing zoning designations
14 applied to the property did not allow the planned for minimum
15 standard minor arterial, zone changes presumably could be
16 adopted to allow such construction. Under ORS 197.835(4)(a),
17 it is unclear whether such zone changes would be required to
18 address relevant statewide planning goal issues, at the time
19 the zone changes were adopted.

17 _____
5

18 The definition of "Transportation System" in Goal 12
19 (Transportation) does suggest a recognition that such
20 facilities may exist.

20 "Transportation System -- refers to one or more
21 transportation facilities that are planned, developed
22 and operated and maintained in a coordinated manner to
23 supply continuity of movement between modes and within
24 and between geographic and jurisdictional areas."
25 (Emphasis added.)

23 Goal 11 (Public Facilities and Services) provides, in
24 part:

25 "Urban and rural development shall be guided and
26 supported by types and levels of urban and rural
public facilities and services appropriate for, but

1 limited to, the needs and requirements of the urban,
urbanizable and rural areas to be served. * * *

2 The definition of "Public Facility Plan" in Goal 11 only
3 requires public facility plans for water, sewer and
4 transportation facilities within an urban growth boundary
containing more than 2,500 people.

5 Although the goals themselves do not clearly discuss
6 and provide for transportation facilities on rural lands
7 that may be needed to connect urban areas, there is
language in the guidelines for several goals that, to
varying degrees, recognizes such facilities.

8 Goal guidelines are advisory only and, therefore, are
9 to be distinguished from the goals themselves, which are
mandatory statewide planning standards. ORS 197.015(8)
10 and (9). In addition, we find the references in the
11 guidelines to major transportation facilities on rural
land inconclusive. The language is set forth below merely
12 to demonstrate the inconclusive treatment the goals and
guidelines extend to urban level transportation facilities
outside urban growth boundaries.

13 * * * * *

14 "2. Extension of services, such as sewer and water
15 supplies into rural areas should be appropriate
16 for the needs of agriculture, farm use and non
farm uses established under ORS 215.213 and
215.283.

17 "3. Services that need to pass through agricultural
18 lands should not be connected with any use that
19 is not allowed under ORS 215.203, 215.213, and
20 215.283, should not be assessed as part of the
farm unit and should be limited in capacity to
serve specific service areas and identified
needs."

21 * * * * *." Goal 3, Guidelines, B. Implementation.

22 * * * * *

23 "4. Road standards should be limited to the minimum
width necessary for management and safety.

24 "5. Highways through forest lands should be designed
25 to minimize impact on such lands.

26 "6. Rights of way should be designed so as not to

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preclude forest growth whenever possible.

"* * * * *." Goal 4, Guidelines, B. Implementation.

"1. Plans providing for public facilities and services should be coordinated with plans for designation of urban boundaries, urbanizable lands, rural uses and for the transition of rural land to urban uses.

"2. Public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses.

"* * * * *

"6. All utility lines and facilities should be located on or adjacent to existing public or private rights of way to avoid dividing existing farm units.

"* * * * *." Goal 11, Guidelines, A. Planning.

"* * * * *

"3. No major transportation facility should be planned or developed outside urban boundaries on Class I and II agricultural land, * * * unless no feasible alternative exist.

"4. Major transportation facilities should avoid dividing existing economic farm units and urban social units unless no feasible alternative exist.

"* * * * *." Goal 12, Guidelines, A. Planning.

"1. The type, location and phasing of public facilities and services are factors which should be utilized to direct urban expansion.

"2. The type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.

"* * * * *." Goal 14, Guidelines, B. Implementation.

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2 The only administrative rule adopted by LCDC that we have
3 located which gives any assistance in identifying the state's
4 land use policy concerning urban level transportation
5 facilities on rural lands suggests an exception to Goal 14 is
6 required. OAR 660-14-040. See 1000 Friends of Oregon v. LCDC
7 (Curry County), 301 Or 447, 482, 724 P2d 268 (1986) (explaining
8 that although this rule is nominally directed at incorporation
9 of new cities, its application is broader and encompasses all
10 urban level development on rural lands). OAR 661-14-040
11 provides, in part:

12 * * * * *

13 "(2) A county can justify an exception to Goal 14 to
14 allow * * * establishment of new urban
15 development on undeveloped rural land. Reasons
16 which can justify why the policies in Goals 3, 4,
17 11, and 14 should not apply can include but are
18 not limited to findings that * * * urban levels
19 of facilities and services are necessary to
20 support an economic activity which is dependent
21 upon an adjacent nearby natural resource.

22 "(3) To approve an exception under this rule, a county
23 must also show:

24 "(a) That Goal 2, Part II(c)(1) and (c)(2) are
25 met by showing the proposed urban
26 development cannot be reasonably
accommodated in or through expansion of
existing urban growth boundaries or by
intensification of development at existing
rural centers;

"(b) That Goal 2, Part II(c)(3) is met by showing
the long-term environmental, economic,
social and energy consequences resulting
from urban development at the proposed site
with measures designed to reduce adverse
impacts are not significantly more adverse
that would typically result from the same
proposal being located on other undeveloped
rural lands, considering:

"(A) Whether the amount of land included within
the boundaries of the proposed urban
development is appropriate, and

"(B) Whether urban development is limited by the

1 air, water, energy and land resources at or
2 available to the proposed site, and whether
3 urban development at the proposed site will
adversely affect the air, water, energy and
land resources of the surrounding area.

4 "(c) That Goal 2, Part II(c)(4) is met by showing
5 the proposed urban uses are compatible with
6 adjacent uses or will be so rendered through
measures designed to reduce adverse impacts
considering:

7 "(A) Whether urban development at the proposed
8 site detracts from the ability of existing
9 cities and service districts to provide
services, and

10 "(B) Whether the potential for continued resource
11 management of land at present levels
surrounding and nearby the site proposed for
urban development is assured.

12 "(d) That an appropriate level of public
13 facilities and services are likely to be
provided in a timely and efficient manner;

14 "(e) That * * * new urban development of
15 undeveloped rural land is coordinated with
16 comprehensive plans of affected
jurisdictions and consistent with plans that
control the area * * *." (Emphasis added.)

17 _____
7

18 As noted, supra, at n 3, both the AF-20 and EFU zone are
19 exclusive farm use zones, as that term is used in
ORS chapter 215.

20 _____
8

21 Later in this opinion we address the separate question of
22 whether the county's EFU zone and AF-20 zone implement fully
23 the highway improvement and reconstruction authorized in EFU
zones under ORS chapter 215.

24 _____
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25 We note there is no proscription against creation of new
26 land parcels in ORS 215.213(1)(1) and 215.213(1)(o), which do
not allow acquisition of additional right of way.

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Although it is not entirely clear, we interpret the proscription against creating new land parcels to prohibit acquisition of right of way in situations where the right of way acquisition would divide adjoining property into separate parcels rather than simply reduce adjoining parcels in size.

11

Petitioners use the term "non urban." For purposes of this opinion, we perceive no meaningful distinction between rural uses and non urban uses.

12

In Hammack v. Washington County, ___ Or LUBA ___ (LUBA No. 87-037, September 11, 1987), we explained:

"Under the Supreme Court's decision in 1000 Friends of Oregon v. LCDC (Curry County), it may well be there is nothing inherently urban or rural about residential, commercial or even industrial uses. Rather, under current LCDC interpretative rules there are merely a number of relevant factors such as parcel size, intensity, necessity for urban facilities and proximity to the UGB. * * *" Id. at 35, n 6.

13

By "another way" we mean an approach that focuses more on the state policy embodied in Goal 14 and less on the artificial process of classifying all uses and activities as either urban or rural.

14

Under the Supreme Court's analysis in 1000 Friends of Oregon v. LCDC (Curry County), supra, action to allow urban use of rural land:

"Converts that land to urban use and must comply with [Goal 14 by amending the UGB to include such land] or take exception to Goal 14, even if that decision does not change the use of the land." 301 Or at 502.

15

We find nothing in the Court of Appeals' recent decision in

1 McCaw Communications, Inc. v. Marion County, 96 Or App 552,
2 P2d (1989), that requires a different result in our
3 resolution of this assignment of error. In that case, the
4 court determined that the county's EFU zone provision for
5 "utility facilities necessary for public service," which
6 corresponds to provisions for such facilities in
7 ORS 215.213(1)(d) and ORS 215.283(1)(d), required the county to
8 find "it is necessary to situate the facility in the [EFU] zone
9 [presumably as opposed to some other zone] in order for the
10 service to be provided." Id. at 556. There is no requirement
11 in ORS 215.213(1)(m) and ORS 215.213(2)(r) that the highway
12 reconstruction or modification be necessary.

13
14 We also note that nothing in Goal 3 or the administrative
15 rule adopted by LCDC at OAR 660 division 5 interpreting Goal 3
16 provides that uses expressly allowable under ORS 215.213 or
17 215.283 nevertheless must be limited in scale and intensity to
18 comply with Goal 14's prohibition against urban uses of rural
19 lands. We decline to read such a requirement into Goals 3 and
20 14 in the absence of some suggestion in the goal language or
21 LCDC's interpretative rules that it intends to require a case
22 by case, urban/rural analysis for uses the legislature
23 specified in ORS 215.213 and ORS 215.283.

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The CDC defines "public utility" as follows:

"Any corporation, including municipal or semi-municipal corporation, service district, company, individual, or association that owns or operates any plant or equipment for the conveyance of telegraph or telephone messages, with or without wires; for the transportation of water, gas or petroleum products by pipeline; for the production, transportation, delivery or furnishing of heat, light, water or electricity; for the transmission and delivery of television pictures and sound by cables; for the transportation of persons or property by street, railroads or other street transportation or common carrier; for the disposal of sewage; or for the disposal of stormwater runoff." CDC 430-105.

The CDC defines "public utility service facility" as follows:

"A public utility service facility includes buildings, structures and equipment within a fenced or otherwise enclosed area for the purpose of switching, regulating or controlling public utility services."
CDC 430-105.3.

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Adoption of EFU zones that meet the minimum standards specified in ORS Chapter 215 is mandated by Goal 3.

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No one argues the county's failure to apply, at the time the plan was amended, a zone that would allow the planned for highway improvements violates Goal 12, and we do not address that question.

19

If the county amends its EFU and AF-20 zones to reflect ORS 215.213(1) and (2) as amended in 1987, another option potentially available to the county would be to amend Policy No. 22 to eliminate the application of Policy No. 22 to the transportation facilities allowed in ORS 215.213(1) and (2).