

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS Aug 12 9 04 AM '81

OF THE STATE OF OREGON

1000 FRIENDS OF OREGON and)
METROPOLITAN SERVICE)
DISTRICT,)

Petitioners,)

v.)

LUBA No. 80-075

CLACKAMAS COUNTY and)
CARMEL ESTATES, INC.,)

Respondents,)

FINAL OPINION
AND ORDER

CITY OF SANDY and)
METROPOLITAN SERVICE DISTRICT)

Petitioners,)

v.)

LUBA No. 80-076

CLACKAMAS COUNTY and)
CARMEL ESTATES, INC.,)

Respondents.)

Appeal from Clackamas County.

Richard P. Benner, Portland, filed the Petition for Review and argued the cause for Petitioner 1000 Friends of Oregon.

E. Andrew Jordan, Portland, filed the Petition for Review and argued the cause for Petitioner Metropolitan Service District.

Michael E. Judd, Oregon City, filed the brief and argued the cause for Respondent Clackamas County.

Wayne D. Landsverk, Portland, filed the brief and argued the cause for Respondent Carmel Estates, Inc.

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

REVERSED in part and REMANDED in part 08/12/81

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

1 REYNOLDS, Chief Referee.

2 NATURE OF THE PROCEEDING

3 The above consolidated appeals challenge the validity of
4 Clackamas County's Rural Plan Amendment II, also referred to as
5 RUPA II, which amends the comprehensive plan text and map for
6 non-urban portions of Clackamas County. RUPA II designates as
7 rural, rural center, commercial or industrial 33,545 acres
8 identified by the county as not suited for forest or
9 agricultural activities because of poor quality of the soils
10 and commitment to non-farm/non-forest uses as a result of
11 existing development on or surrounding the areas. RUPA II also
12 designates approximately 35,520 acres as agriculture and
13 forest. Petitioners in these appeals challenge only a portion
14 of the 33,545 acres designated as rural, rural center,
15 commercial or industrial.

16 ASSIGNMENTS OF ERROR

17 Petitioners 1000 Friends of Oregon and the City of Sandy
18 challenge the validity of 35 areas designated for
19 non-farm/non-forest use by RUPA II. With respect to area Y-14,
20 also known as Heidi's Corner, petitioners contend that the
21 designation of approximately 30 of the 40 acres included in
22 this area for commercial use violates Goals 2, 3, 11 and 14.
23 The commercial designation for this 30 acre parcel, also known
24 as the Carmel Estates property, violates Goals 2 and 3 because
25 the property is agricultural land within the meaning of Goal 3
20 and no proper exception to Goal 3 was taken pursuant to Goal

1 2. Petitioners allege Goals 11 and 14 have been violated
2 because the commercial designation for this property authorizes
3 urban level commercial development within and will necessitate
4 extension of an urban level of services into a rural area.

5 The remaining 34 areas challenged by petitioners 1000
6 Friends of Oregon and the City of Sandy involve areas
7 designated rural in RUPA II with 5 and 10 acre minimum lot
8 sizes. Petitioners contend that the county's determination of
9 commitment of these lands to non-farm and non-forest uses is in
10 violation of Goals 2, 3 and 4.

11 Intervenor-Petitioner Metropolitan Service District
12 ("Metro") also contests the commercial designation on the
13 Carmel Estates property on the basis that such designation
14 violates Goals 2, 3, 11 and 14. As an additional basis for
15 violation of Goal 2, Metro contends that a commercial
16 designation on this property is inconsistent with the Metro
17 Land Use Framework Plan, a regional plan with which Goal 2
18 mandates county plans be consistent.

19 Metro also challenges the validity of rural designations on
20 selected areas, most of which are within the territory covered
21 by the Metro Framework Plan. In its second and third
22 assignments of error, Metro challenges certain 1 and 2 acre lot
23 designations (RA-1/Rural Center and RA-2/Rural) on the basis
24 that the county's findings do not show how these designations
25 are consistent with the county's comprehensive plan, in
26 violation of Goal 2. Metro also argues in these assignments of

1 error that the RUPA II designations violate Goal 14 because of
2 their negative impact on the regional urban growth boundary.
3 Metro's fourth assignment of error challenges certain of the
4 county's 5 acre lot designations (RRFF-5/Rural) on the basis of
5 a violation of Goal 2 due to inconsistency between the county
6 plan and these amendments, and Goal 14 because of the potential
7 for new growth outside the UGB. Metro's fifth assignment of
8 error challenges three industrial area designations on the
9 basis that they violate the Metro Framework Plan, resulting in
10 a Goal 2 violation, and Goal 14. Metro's sixth and final
11 assignment of error alleges that the county violated Goals 2
12 and 3 by designating certain agricultural land for 10 acre lot
13 sizes (FF-10) without taking a proper exception.

14 STATEMENT OF FACTS

15 RUPA II was adopted by Clackamas County on June 18, 1980,
16 through enactment of Court Order No. 80-1205. As mentioned
17 above, RUPA II amends the comprehensive plan map and zoning
18 designations by designating as rural, rural center, commercial
19 or industrial 33,545 acres in Clackamas County.¹

20 The process followed by Clackamas County in adopting RUPA
21 II is virtually identical to that involved in RUPA I, the
22 validity of which was challenged in 1000 Friends of Oregon v.
23 Board of Commissioners of Clackamas County, ___ Or LUBA ___
24 (LUBA No. 80-060, 1981). For the areas designated in the plan
25 as rural, rural center, commercial or industrial which are
26 involved in this appeal, Clackamas County in each case took the

1 position that these areas were committed to non-farm or
2 non-forest uses. Exhibit "D" to the county's order sets forth
3 the factors which the county considered as bearing on the
4 question of commitment to non-farm/non-forest uses. After each
5 of the ten factors listed is an explanation of why each factor
6 is relevant to a determination of commitment. Exhibit "D",
7 however, contains no individual analysis of each of the 84
8 separate areas determined to be committed to
9 non-farm/non-forest uses. The factors included in Exhibit "D"
10 are as follows:

- 11 1. Size of the ownerships of the contested property.
- 12 2. Development on the contested property.
- 13 3. Soil quality of the property.
- 14 4. Recent farming history of the property.
- 15 5. Topography of the property.
- 16 6. Roads through or bordering the area.
- 17 7. Development of surrounding area.
- 18 8. Ownership size of neighboring areas.
- 19 9. Plan designation and zoning of adjacent properties.
- 20 10. Natural boundaries.

21 Following Exhibit "D" in the county's order are findings of
22 fact with respect to each area. For each area, the findings
23 indicate the size of ownership of the contested property, what
24 the development is like on the property, what the soil quality
25 of the property is, and so forth. Following a recitation of
26 these facts is an indication of the plan and zoning designation

1 for the area. An example of this indication is area Y-14
2 (Heidi's Corner):

3 "Plan: Planned Commercial.

4 "Zoning: PC, Planned Commercial and C-2, Community
5 Commercial."

6 OPINION

7 We turn now to the individual assignments of error. Some
8 of the areas challenged by Metro overlap those areas challenged
9 by 1000 Friends of Oregon. The challenge to the commercial
10 designation for the Carmel Estates property in area Y-14 is but
11 one example. We will discuss this area first, discuss
12 thereafter the allegations of error with respect to the 34
13 areas addressed by petitioners 1000 Friends of Oregon and the
14 City of Sandy, and conclude with the remaining challenges made
15 by Metro.

16 1. Area Y-14 (Heidi's Corner-Carmel Estates property).

17 Petitioners' combined assignment of error asserts that the
18 designation of Carmel Estates property violates Goal 2 because
19 the designation is inconsistent with the Metro Land Use
20 Framework Plan, violates Goals 2 and 3 because the land is
21 agricultural and no proper exception to Goal 3 was taken
22 pursuant to Goal 2, and Goals 11 and 14 because the commercial
23 designations of the land authorize an urban use outside and
24 will necessitate the extension of an urban level of services
25 beyond any urban growth boundary.

26 The county's finding for the entire area designated Y-14 is

1 set forth in Appendix "A" to this opinion. The finding with
2 respect to the Carmel Estates property, however, is as follows:

3 "This 30.39 acre ownership, described as T2S,
4 R4E, Section 5, Tax Lots 1000, 1100, 1300 and 1400 is
5 bordered on the north and northeast by Highways 212
6 and 26. The property is divided by the connecting
7 ramp between the two highways. About half of the
8 existing land use is scattered trees and brush with
9 the remainder cleared. Detailed soil maps for this
10 area show the soil suitability for agriculture is 10%
11 Class II, and 90% Class IV. The soil suitability for
12 Douglas Fir is 2% Class II and 98% Class III. The
13 suitability of the soil for septic tanks system is 10%
marginal and 90% unsuitable. State Highway 212 is the
major east/west route in northern Clackamas County and
Highway 26 is a limited access expressway. In
addition to Heidi's Swiss Village, the property is
impacted by commercial uses north of Highway 212 (a
nursery, auto wrecking yard and a truck sales lot).
This property, impacted by the road network and nearby
commercial uses, and having marginal soils make it a
good site for commercial expansion to serve the
growing needs of the area."

14 The first issue under this assignment of error is
15 whether the designation of the Carmel Estates property for
16 commercial use is inconsistent with the Metro Land Use
17 Framework Plan, and if so, whether this violates Goal 2.
18 It is not disputed by any of the parties to this appeal
19 that the Metro Framework Plan applies to this land and is
20 a regional plan contemplated in Goal 2. Nor is it
21 disputed that the Carmel Estates property is classified as
22 "rural" on the Framework Plan. The plan restricts
23 commercial development in rural areas to

24 "uses necessary for and on a scale commensurate
25 with rural development including, but not limited to,
26 grocery stores, garages, service stations, taverns and
home related occupations."

1 The Metro plan sets forth three criteria which must be met in
2 approving rural commercial land use: (a) The use is necessary
3 to support existing rural development; (b) The scale of use is
4 commensurate with the scale or intensity of existing rural
5 development; and (c) The use is consistent with the uses
6 allowed.

7 Statewide Goal 2 (Land Use Planning) provides, in pertinent
8 part, as follows:

9 "...county...plans and actions relating to land
10 use shall be consistent with...regional plans adopted
under ORS 197.705 through 197.795."

11 As previously mentioned no one contests that Metro's Land Use
12 Framework Plan is a "regional plan" subject to Goal 2. Also,
13 as previously mentioned, no one contests that the Carmel
14 Estates property is designated rural on the Metro Land Use
15 Framework Plan. Therefore, the county's designation of the
16 Carmel Estates property must be consistent with the rural
17 designation of this property in Metro's Land Use Framework
18 Plan. We hold that it is not.

19 In City of Sandy v Board of County Commissioners of
20 Clackamas County, LCDC No. 79-029 (1980), LCDC invalidated on
21 numerous grounds Clackamas County's zoning of the Carmel
22 Estates property to planned commercial.² This is the same
23 zoning designation which the county has attempted to place on
24 the property in RUPA II. As set forth in that case, some of
25 the permitted uses within the planned commercial zoning
26 designation would include:

1 "...a 90,000 square foot shopping center
2 containing: a 12,000 square foot furniture store; a
3 25,000 square foot super market; men's and women's
4 apparel stores; two financial institutions; a music
5 and record store; two restaurants; 9,400 square feet
6 of office space; a 5.2 acre motel." City of Sandy v.
7 Board of Commissioners of Clackamas County, LCDC No.
8 79-029 at 10-11.

9 After noting the above uses which would be permitted within
10 the planned commercial zone, LCDC stated:

11 "***lacking a better definition, one could define
12 the term 'urban' by the example of this shopping
13 center." LCDC No. 79-029 at 11.

14 In the present case, there is no evidence the developer
15 intends to place a 90,000 square foot shopping center on the
16 Carmel Estates property. There was such evidence in LCDC No.
17 79-029. We note the potential use of this property as a
18 shopping center only to demonstrate that such is a permissible
19 use within the county's planned commercial zoning designation.

20 Having examined the finding of the county with respect to
21 this area and the permissible uses within a planned commercial
22 designation, we conclude that the county has failed to address
23 the Metro Land Use Framework Plan requirements for approving a
24 rural commercial land use. The county has addressed neither
25 the need for a planned commercial designation to support
26 existing rural development nor whether such a designation would
be on a scale commensurate with the scale or intensity of
existing rural development. Moreover, we conclude that the
uses which are permitted within the planned commercial zoning
designation, such as a 90,000 square foot shopping center, are

1 not consistent with Metro's list of permissible rural
2 commercial uses, i.e., small groceries stores, garages, service
3 stations, taverns and home related occupations. The county's
4 finding with respect to the Carmel Estates property does not
5 show that the commercial designation is consistent with the
6 Metro Framework Plan and the designation is, as a matter of
7 law, inconsistent with that plan, in violation of statewide
8 planning Goal 2.³

9 The second issue under petitioners' first assignment of
10 error is whether the county's finding in support of its
11 commercial designation of the Carmel Estates property complies
12 with Goals 2 and 3. Again, in City of Sandy v. Board of County
13 Commissioners of Clackamas County, LCDC No. 79-029, LCDC
14 concluded that the county's finding of commitment in support of
15 its planned commercial zoning designation for the Carmel
16 Estates property was insufficient to satisfy Goal 2. The
17 finding quoted by LCDC in that opinion is at least as good, if
18 not better, than the county's finding in support of the
19 commercial designation for the Carmel Estates property in RUPA
20 II.⁴ As with the finding in LCDC No. 79-029 Clackamas
21 County's finding of commitment in support of the commercial
22 designation for the Carmel Estates property is insufficient in
23 that it fails to explain why the existence of Heidi's across
24 the intersection and Highways 212 and 26 commit the Carmel
25 Estates property to non-farm/non-forest use. See 1000 Friends
26 of Oregon v. Clackamas County, ____ Or LUBA ____ (LUBA No.

1 80-060, 1981).

2 The final issue under this assignment of error is whether
3 the commercial designation of the Carmel Estates property
4 violates Goals 11 and 14. This issue was also addressed by
5 LCDC in City of Sandy v. Board of County Commissioners of
6 Clackamas County, LCDC No. 79-029. As we have previously
7 quoted from the opinion in that case, Clackamas County's
8 planned commercial designation would authorize a 90,000 square
9 foot shopping center, which is clearly an urban use of land.
10 With regard to Goal 11, we cannot tell from the county's
11 finding whether an urban level of services would be necessary
12 to support a planned commercial zoning designation. Clackamas
13 County designated this property commercial in its plan without
14 even considering the public facilities and services which might
15 be necessary to support uses authorized by such a designation.
16 At a minimum, we would have to remand this matter to the county
17 to make findings concerning Goal 11 in order for us to be able
18 to tell whether the required services would constitute an urban
19 level of services. In view of our holding that the zoning
20 designation for this property violates the Metro Framework Plan
21 and Goal 14, remand on this issue would serve no useful purpose.

22 Accordingly, for the reasons set forth above, Clackamas
23 County's commercial designation of the Carmel Estates property
24 located in area Y-14 violates Goals 2, 3 and 14, and is
25 therefore invalid.

1 2. Petitioners' assignments of error concerning 34 areas
2 designated rural.

3 Petitioners City of Sandy and 1000 Friends of Oregon
4 challenge Clackamas County's rural designation on the following
5 34 areas:

- 6 Area R-1, West Ladd Hill
- 7 Area R-2, Parret Mountain
- 8 Area R-3, Heater Road
- 9 Area R-5, New Era
- 10 Area R-6, May Road
- 11 Area R-7, South End Road
- 12 Area R-9, Central Point Road
- 13 Area R-14, North Beaver Creek
- 14 Area R-20, Ferguson and North End Roads
- 15 Area R-21, East of Oregon City
- 16 Area R-23, Abernethy Creek
- 17 Area R-24, North of Redland Road
- 18 Area R-25, Holcomb and Redland Road
- 19 Area R-28, Holcomb-Outlook
- 20 Area R-31, Scouter's Mountain
- 21 Area R-32, Pleasant Valley
- 22 Area R-33, Wilson Corner
- 23 Area R-34, Foster Road
- 24 Area R-35, Upper Rock Creek
- 25 Area R-38, North Damascus
- 26 Area R-39, Richardson Creek
- 27 Area R-41, Southwest of Boring
- 28 Area R-42, Hoffmeister Road
- 29 Area R-43, West of Boring
- 30 Area R-44, Hillsvievw
- 31 Area R-47, Anderson
- 32 Area R-48, South of Orient
- 33 Area R-49, North of Heidi's
- 34 Area R-50, Northeast of Boring
- 35 Area R-57, Judd Road
- 36 Area R-58, Highway 224
- 37 Area R-59, East Eagle Creek
- 38 Area R-64, George Road
- 39 Area R-40, Royer Road

40 Respondent Clackamas County, in its brief, sums up the
41 above described areas as follows:

42 "...all the areas challenged by Petitioners 1000
43 Friends are properties which the county designated

1 rural in the comprehensive plan and zoned for 5 acre
2 or 10 acre minimum lot sizes (RRFF-5 and FF-10). Many
3 of these areas have agricultural soil Class IV or
4 better, and some fit within the Goal 4 definition of
5 forest lands. The county therefore took an exception
6 to Goals 3 and 4 for these areas based on its
7 determination that they are irrevocably committed to
8 non-farm/non-forest use. The issue raised by
9 Petitioner 1000 Friends is whether the county's
10 decision that these areas are committed is valid."

11 The format of the county's order by which it determined the
12 lands included within the areas cited above were committed
13 involved setting forth in Exhibit "D" the ten factors which it
14 considered to be relevant to a determination of commitment
15 followed by findings of fact for each of the areas involved.
16 This approach is identical to that used by the county in RUPA I
17 the validity of which was the subject of 1000 Friends of Oregon
18 v. Board of Commissioners of Clackamas County, Or LUBA
19 (LUBA No. 80-060, 1981) hereinafter referred to as LUBA No.
20 80-060, RUPA I. In that case, we stated what was required in
21 order to arrive at a conclusion of irrevocable commitment and
22 what our scope of review was in reviewing the conclusion. With
23 respect to what was required in order to arrive at a conclusion
24 of irrevocable commitment we stated:

25 "...we hold in sum that a conclusion of
26 irrevocable commitment to non-resource (non-farm or
27 non-forest) use must at a minimum be based on detailed
28 findings, supported by substantial evidence showing
29 that the subject land cannot now or in the foreseeable
30 future be used for any purpose contemplated in
31 statewide Goals 3 and/or 4 because of one or more of
32 the following:

- 33 (a) Adjacent uses;
- 34 (b) Parcel size and ownership patterns⁵
- 35 (c) Public services;

- 1 (d) Neighborhood and regional
2 characteristics;
3 (e) Natural boundaries.
4 (f) Other relevant factors."
5 LUBA No. 80-060, RUPA I, Slip Op at 13-14.
6 (Footnote omitted).

7 With respect to our scope of review we stated:

8 "Therefore, it is the determination of this Board
9 that the role of LUBA is to first determine whether
10 the findings address all relevant criteria and are
11 supported by substantial evidence. If there are
12 insufficient findings, then the conclusion is not
13 supported. Only if we decide sufficient findings
14 exist (i.e. findings which address all relevant
15 criteria and are supported by substantial evidence)
16 will we apply the test of whether a reasonable person
17 would be compelled to conclude irrevocable commitment
18 to non-resource use exists." LUBA No. 80-060, RUPA I,
19 Slip Op at 21.

20 We also said in LUBA No. 80-060, RUPA I, that the ten
21 factors set forth in Exhibit "D" to the RUPA I document, which
22 factors are identical to the ten factors set forth in the RUPA
23 II document, were not an adequate explanation in and of
24 themselves of why the existence of certain lot sizes,
25 surrounding uses, and so forth, necessarily resulted in a
26 conclusion of commitment with respect to a specific area. We
27 said:

28 "These are valid considerations and help explain
29 the county's thought processes but they are not
30 findings. They are not specifically applied to each
31 individual area nor do they recite facts unique to
32 each area. Without a specific recitation of facts
33 relative to each individual block these considerations
34 are not findings and are not sufficient to explain why
35 a conclusion of commitment was arrived at in a
36 specific factual situation. See Sunnyside
37 Neighborhood League v. Board of Commissioners of
38 Clackamas County, 280 Or 1, 21, 569 P2d 1063 (1977);
39 City of Lake Oswego v. Clackamas County, LCDC 78-031

1 (1979), page 14." LUBA No. 80-060, RUPA I, Slip Op at
2 23.

3 With the foregoing as a starting point for analysis of the
4 34 areas challenged by petitioners, we conclude that the same
5 deficiency exists in each of the 34 areas presented here as
6 existed in each of the ten areas challenged in LUBA No. 80-060,
7 RUPA I. That is, the county has set forth in its findings of
8 fact with respect to each of 34 areas what the lot sizes are
9 within the area, how many total acres are involved, the number
10 of ownerships, the total number of dwelling units in the area
11 as well as the average number of acres per dwelling unit within
12 the area. The county also made a finding for each of the areas
13 with respect to development on adjacent lands. Clackamas
14 County's finding with respect to area R-1, West Ladd Hill, is
15 fairly representative of the findings for all 34 areas. It is
16 set forth in full in Appendix "B" to this opinion.

17 The existence of small parcels, some with dwelling units,
18 in an area of agricultural or forest land simply does not
19 justify a conclusion that the area is somehow committed to
20 non-farm and non-forest uses. As we stated in LUBA No. 80-060,
21 RUPA I:

22 "***Nowhere has the county addressed how the
23 small parcel ownerships will affect this particular
24 area. No inventory of activities or related findings
25 taking place on the neighboring property exists in the
26 record. The conclusion that because properties are
held in small ownership the use of the subject
property as either agricultural or forest land is
somehow prevented is unsupported.

1 "In addition, the entire thrust of the county's
2 finding in this matter seems to be directed at
3 agricultural lands and the decision to draw the border
4 line where it was is directed at its relation to other
5 agricultural land. There are no specific findings to
6 support the conclusion that it is inappropriate to use
7 the property as forest land.***" LUBA No. 80-060,
8 Slip Op at 25-26.

9 It would serve no useful purpose to analyze the remaining
10 33 areas in the same manner as we have analyzed area R-1
11 above. Suffice it to say that the county's findings of fact
12 for each area are simply not sufficient to explain why it is
13 impossible that each such area be used for farm or forest
14 purposes. In the absence of such demonstration, the county has
15 failed to show that the land is committed to non-farm or
16 non-forest related purposes. Accordingly, the county's finding
17 of commitment violates Goals 2, 3 and 4 of the statewide
18 planning goals.

19 3. Metro's Second, Third and Fourth Assignments of error.

20 In its second, third and fourth assignments of error, Metro
21 argues that certain of the county's RA-1/Rural Center, RA-2
22 Rural and RRF-5/Rural designations violate Goals 2 and 14.⁵
23 Metro's Goal 2 argument is that the county failed to
24 demonstrate by way of findings how these designations are
25 consistent with the "rural center" and "rural" criteria in the
26 county's comprehensive plan. The Goal 14 argument is that the
27 county failed to address the impact of its zoning designations
28 on the regional urban growth boundary. We agree with
29 petitioner that the county violated Goal 14.

1 A jurisdiction such as Clackamas County which is proposing
2 to allow rural parcelization of the size proposed here must
3 consider the impact such parcelization is likely to have on the
4 regional urban growth boundary. This is at least an implicit
5 requirement of Goal 14.⁶ As Metro stated in its exceptions
6 filed in response to the Board's first Proposed Opinion and
7 recommendations submitted to LCDC:

8 "****If Goal #14 is to prevent sprawl, it must
9 have application outside UGB's as well as inside.****"

10 The creation of many small rural lots (in this case almost
11 1,000 new lots may be created as a result of the county's
12 action) may necessarily result in the provision of a
13 substantial amount of housing outside the UGB -- housing which
14 may well attract people who otherwise would live within the
15 regional UGB. The effect of this on the UGB's ability to
16 control residential sprawl must be addressed by the county.
17 The county has not pointed to any place either in its written
18 findings or in the record where it has addressed the impact of
19 the designations on the regional urban growth boundary. We
20 have been unable to locate any place in the record where the
21 county has addressed Goal 14. Petitioners' second, third and
22 fourth assignments of error, insofar as they allege a violation
23 of Goal 14, are sustained.⁷

24 At the end of Metro's fourth assignment of error, Metro
25 lists four areas which are located outside of Metro's area of
26 responsibility and designated for 5 acre lot sizes by Clackamas

1 County. Metro's argument with respect to these areas is as
2 follows:

3 "These are generally undeveloped areas with large
4 parcels with few houses which the county proposes to
5 carve up into 5 acre lots. No justification exists in
6 the county findings for such rural parcelization."

7 Clackamas County urges that Metro has no standing to challenge
8 the designations for these areas because "it is self-evident
9 that the division of land which is not even within the MSD
10 boundary into lots no smaller than 5 acres certainly causes no
11 injury to the Metropolitan Service District or to its urban
12 growth boundary." On page 4 of its Petition for Review, Metro
13 sets forth the following as the basis for its standing to
14 challenge areas outside Metro's area of responsibility:

15 "Those portions of the decision affecting land
16 outside Metro adversely affect Metro by allowing land
17 uses outside the UGB which will impede Metro's ability
18 to carry out the purposes of the UGB and which will
19 compete with uses inside the UGB."

20 The above allegation, together with what we have said about
21 Clackamas County's duty to consider the effect of rural
22 parcelizations on the Metro UGB is sufficient to give Metro
23 standing to challenge such decisions on the basis that they
24 violate Goal 14. Clackamas County had a duty to consider the
25 effect of its decision to allow rural parcelizations on the
26 Metro UGB. Metro as the body charged by law with the duty of
implementing the Framework Element should have standing to
challenge Clackamas County's failure to do so. We conclude,
therefore, that Metro has standing to challenge Clackamas

1 County's rural designations for areas R-1, R-2, R-4, R-17 and
2 R-21. We also conclude Clackamas County erred in failing to
3 address the impact of its decision with respect to these areas
4 on the Metro UGB.

5 6. Metro's fifth assignment of error.

6 Metro's fifth assignment of error is that the county
7 violated Goals 2 and 14 by allowing urban industrial
8 development outside the urban growth boundary in areas Y-6,
9 Y-11 and Y-12. According to Metro, all of these areas permit
10 light industrial uses, and area Y-11 permits both light and
11 heavy industrial uses. Two of the areas, area Y-6 and area
12 Y-12 are zoned for residential use on 1 acre lots until "the
13 need for more industrial land is proven." Metro contends that
14 the industrial use designation is inconsistent with the Metro
15 Framework Plan which requires non-resource related industry to
16 be located within the urban growth boundary and that this
17 inconsistency results in a violation of Goal 2.

18 The county attempts to justify its industrial plan
19 designation and zoning of these properties on the basis that
20 area Y-11 is currently developed with industrial uses with the
21 exception of 4 acres which are vacant, and areas Y-6 and Y-12,
22 although designated light industrial in the comprehensive plan,
23 are zoned RA-1, i.e. for residential use. With respect to
24 areas Y-6 and Y-12 the county contends that

25 "The treatment of these areas is, in effect, a
26 stop-gap measure to control development in these areas
until the county adopts criteria for rural industrial

1 plan designations and zoning, a project which is
2 currently underway. As the situation in these areas
3 stands now, urban and industrial uses would not be
4 allowed since they are prohibited in an RA-1 zone.
5 One acre residences would likewise not be allowed
6 within this area because this would conflict with the
7 comprehensive plan designation of this property as
8 light industrial."

9 Concerning area Y-11, the fact that an area is already
10 largely developed with industrial uses such as lumber mills and
11 other resource related industries, does not justify designating
12 the entire area for light and heavy industrial uses. Such
13 zoning designation violates the Framework Plan and, hence, Goal
14 2. With respect to areas Y-6 and Y-12, the fact remains that
15 the county has designated these areas in its comprehensive plan
16 for industrial uses other than resource related industry. That
17 the county has also placed RA-1 zoning on the property does not
18 prevent this property from being developed for industrial
19 uses: The RA-1 zoning would likely be declared invalid because
20 it violates the comprehensive plan. The county concedes as
21 much when it states 1 acre residences, which are permitted
22 within an RA-1 zone, could not be allowed to be built because
23 the zone conflicts with the comprehensive plan designation of
24 this property as light industrial.

25 In summary, the Metro Framework Plan requires non-resource
26 related industry to be located within the UGB. The designation
27 of areas Y-6, Y-11 and Y-12 for light industrial in the
28 comprehensive plan violates the Framework Element because the
29 plan designation authorizes non-resource related industrial

1 uses of the property. This results in a violation of Goal 2.

2 7. Metro's sixth assignment of error.

3 In this assignment of error Metro challenges 5 areas
4 designated by Clackamas County as rural and zoned for 10 acre
5 minimum lot sizes (FF-10). Metro's assertion is that the
6 county violated Goals 2 and 3 in so designating these 5 areas
7 which are indentified as follows: Area R-9, R-34, R-38, R-42,
8 and R-43.

9 All of these areas were challenged by Petitioner 1000
10 Friends of Oregon in their Petition for Review. The only
11 distinction between the position of 1000 Friends of Oregon and
12 that of Metro is that 1000 Friends of Oregon did not challenge
13 the entirety of areas R-38 and R-42. We cannot tell from a
14 review of the findings in RUPA II, for these 2 areas, however,
15 upon what basis 1000 Friends of Oregon chose not to challenge
16 the validity of each area in its entirety and instead chose to
17 challenge only parts of each area. Both areas are 400 plus
18 acres in size. For each area there is approximately 1 dwelling
19 unit for every 21 acres. Soil suitability for agriculture in
20 area R-38 is 85% Class IV or better and for area R-42 100%
21 Class IV or better. Both areas have Douglas Fir suitability of
22 100% Class III or better. Area R-38 contains 13 ownerships of
23 15 acres or larger, ranging in size from 19 acres to 64 acres
24 in size. Area R-42 has 13 ownerships of 15 acres or larger
25 ranging in size from 18 acres to 36 acres. For area R-38 the
26 findings state:

1 "Because of the small size of this area and its
2 isolation from other farm and forest areas, as well as
3 the surrounding rural residential uses, it is
4 committed to non-farm and non-forest uses."

5 The finding does not state, however, why this area or the
6 parcels within the area are so small that they cannot possibly
7 be retained for farm or forest uses. Nor has the county
8 explained why the surrounding rural residential uses preclude
9 farm or forest uses particularly on the larger parcels.

10 The findings with respect to area R-42 are somewhat more
11 extensive than for area R-38 with respect to the intensity of
12 development. The finding states:

13 "This area is surrounded by rural designations
14 and rural land uses. It is bordered by several
15 developed subdivisions including Staley Addition, 25
16 lots in Ridgeview, 36 lots on the north. On the west
17 is Eldorado, 46 lots; Wonderview Estates, 10 lots;
18 Trimbel Estates, 16 lots; and Beverly Heights and
19 Donna's Dale, 7 lots. On the south is Regner Terrace,
20 58 lots. In addition there are 3 large subdivisions
21 just to the south, one to the east, two to the
22 northeast and one to the north. All of the lots in
23 these subdivisions are 1 acre in size or smaller and
24 the subdivisions are nearly 100% developed. Also,
25 there are numerous small developed lots in and
26 bordering this area. The large residential population
on small lots prevents this area from being designated
for exclusive farm or forest use."

27 Notwithstanding the more detailed findings in area R-42, the
28 findings nevertheless continue to suffer the same deficiency as
29 do all of the other findings which we have reviewed in RUPA
30 II. They simply fail to explain why development surrounding
31 these large areas, even though it may be of a residential
32 nature, precludes farm or forest use of the parcels and an EFU
33 designation. In fact, in zoning these parcels "farm forest-10"

1 the county seems to recognize the farm and forest potential for
2 these areas. Where such potential exists, the county cannot
3 justify an exception to Goal 3's requirement that these areas
4 be designated in the plan and zoned exclusive farm use on the
5 basis that the lands are "committed" to non-farm and non-forest
6 purposes.

7 For the reasons expressed above, set forth earlier in this
8 opinion with respect to the contentions of 1000 Friends of
9 Oregon and set forth in 1000 Friends of Oregon v. Clackamas
10 County, ___ Or LUBA ___ (LUBA No. 80-060, RUPA I 1981), we
11 conclude that the county has failed to properly demonstrate
12 that areas R-9, R-34, R-38, R-42 and R-43 are committed to
13 non-farm and non-forest uses thereby justifying other than EFU
14 zoning for these areas.

15 CONCLUSION

16 In RUPA II, as in RUPA I, the county has selected large
17 areas of agricultural land, most of which have soil suitable
18 for forest purposes, and has attempted to establish that these
19 areas are committed to non-farm and non-forest related uses.
20 In each case that we have reviewed, however, the findings to
21 support a conclusion of commitment are deficient because they
22 fail to explain why the entire area by reason of adjacent uses,
23 public services, parcel size and ownership patterns,
24 neighborhood and regional characteristics, and natural
25 boundaries, cannot possibly be used for farm or forest purposes.

26 With respect to the areas challenged by Metro and

1 designated in RUPA II for 1 and 2 acre lot designations, the
2 county failed to show how such designations were consistent
3 with Goal 14. The industrial designations challenged by Metro
4 are in violation of Goal 2 because they conflict with the Metro
5 Framework Plan.

6 The adoption of RUPA II with respect to the areas lawfully
7 challenged in these consolidated proceedings is remanded to
8 Clackamas County for further proceedings consistent with this
9 opinion. A listing of the areas challenged in this opinion and
10 the result for each such area is attached as Appendix "B" to
11 this opinion.

12 Reversed in part, remanded in part.

1 "2. The subject property lies at the
2 intersection of major highways. Oregon Route 212
3 is the major east-west route in this section of
4 the county and carries heavy volumes of
5 traffic. It is designated in the Comprehensive
6 Plan as an expressway. The Mount Hood Freeway
7 (Oregon Route 26) is in this area a limited
8 access highway carrying a significant volume of
9 traffic. The Highway 212 overpass and
10 development of the interchange contiguous to the
11 subject property mandates non-agricultural and
12 non-forest use of the subject property.

13 "3. The intensive development (Heidi's) in
14 the southeast quadrant of the intersection
15 including two restaurants, a delicatessen, a
16 souvenir shop and a service station demonstrates
17 the commitment of the subject property to
18 non-agricultural and non-forest uses.

19 "4. The Clackamas County Comprehensive Plan
20 and the Boring Action Neighborhood Group Plan
21 designates the subject property as appropriate for
22 commercial development." Findings, pp. 3-4

23 5

24 The areas designated RA-1/Rural Center challenged by
25 Metro are area numbers Y-4 Damascus Rural Center; Y-8 West
26 Boring Rural Center; and Y-9 East Boring Rural Center.
27 The areas designated RA-2/Rural challenged by Metro are
28 areas R-37 West Damascus; R-46 Haley; and R-12 West
29 Henrici Road. Finally, the areas designated RRF-5/Rural
30 challenged by Metro are areas R-7 South End Road; R-29
31 Monner Road; R-32 Pleasant Valley; R-41 Southwest Boring;
32 R-39 Richardson Creek; R-44 Hillsviiew; and R-47 Anderson.

33 6

34 Moreover, this broad consideration is required by Goal
35 2, which provides:

36 "City, county, state and federal agency and
37 special district plans and actions related to land use
38 shall be consistent with the comprehensive plans of
39 cities and counties and regional plans adopted under
40 ORS 197.705 through 197.795.

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By agreement of the parties and because this matter must be remanded to the county, the Board expresses no opinion as to petitioner Metro's allegations of violation of Goal 2 contained in Metro's second, third and fourth assignments of error. The parties agree that the adoption of RUPA II was a legislative as opposed to quasi-judicial process. Assuming, but without deciding that to be the case, the county's compliance with Goal 2 on remand is governed by what we said in Gruber v. Lincoln County, ___ Or LUBA ___ (LUBA No. 80-088, 1981):

****We view the need for 'findings' in a plan adoption to be met when the record shows facts and policies which, when read together, show a factual base for particular land use designations." Slip Opinion at 11.

Y-14 HEIDI'S CORNER

This 40 acre area is located at the intersection of State Highway 26 and 212. The area has 8 parcels. There are 3 ownerships of which 1 is 0 to 5 acres, 1 is 5 to 10 acres, 0 are 10 to 20 acres, and 1 is over 20 acres in size. Average parcel size is 5.0 acres, and average ownership size is 13.34 acres. The 1 dwelling unit in this area averages one per 40 acres.

Detailed soil maps for this area show the soil suitability for agriculture is 25% Class II, and 25% Class III, and 50% Class IV. The soil suitability for Douglas fir is 100% Class III. The suitability of the soil for septic tank systems is 25% marginal, and 75% unsuitable.

This commercial area is partially developed with a commercial complex designed as a small Swiss village. The operation includes a restaurant, gas station, gift shops, deli, and a bakery.

Parcels or contiguous parcels under the same ownership comprising 15 acres or more are addressed below to demonstrate appropriate designation.

This 30.39 acre ownership, described as T2S, R4E, Section 5, Tax Lots 1000, 1100, 1300, and 1400, is bordered on the north and northeast by Highways 212 and 26. The property is divided by the connecting ramp between the two highways. About half of the existing land use is scattered trees and brush with the remainder cleared. Detailed soil maps for this area show the soil suitability for agriculture is 10% Class II, and 90% Class IV. The soil suitability for Douglas fir is 2% Class II, and 98% Class III. The suitability of the soil for septic tank systems is 10% marginal, and 90% unsuitable. State Highway 212 is the major east/west route in northern Clackamas County, and Highway 26 is a limited access expressway. In addition to Heidi's Swiss Village, the property is impacted by commercial uses north of Highway 212 (a nursery, auto wrecking yard and a truck sales lot). This property, impacted by the road network and nearby commercial uses, and having marginal soils, make it a good site for commercial expansion to serve the growing needs of the area.

Plan: Planned Commercial

Zoning: PC, Planned Commercial, and C-2, Community Commercial

R-1 WEST LADD HILL

This 240 acre area is located west of Ladd Hill adjacent to Yamhill County. The area has 34 parcels. There are 25 ownerships of which 14 are 0 to 5 acres, 6 are 5 to 10 acres, 1 is 10 to 20 acres, and 4 are over 20 acres in size. Average parcel size is 7.06 acres, and average ownership size is 9.60 acres. The 17 dwelling units in this area average one per 14.12 acres.

Detailed soil maps for this area show the soil suitability for agriculture is 20% Class II, 60% Class III, 10% Class IV, and 10% Class VI-VIII. The soil suitability for Douglas fir is 100% Class III. The suitability of the soil for septic tank systems is 85% suitable, 5% marginal, and 10% unsuitable.

There are four ownerships over 15 acres in this statistical area.

The first ownership of 33.26 acres consists of Tax Lot 100, T3S, R1W, Section 30C. Located on Ladd Hill Road, this parcel is split into two sections by another parcel. The larger section is covered by trees and brush. The remaining northern section is cleared with a few trees. To the north and south are a number of small ownerships with dwellings, plus some larger ownerships.

The second ownership, 19.45 acres, consists of Tax Lot 1300, T3S, R1W, Section 30C. It fronts on Kramien Road on the south and Ladd Hill Road on the east. The parcel is covered with trees and brush. To the north are developed parcels of 10 acres or less. Directly southeast are developed lots of 3.17 acres and .74 acres. To the southwest is the Ladd Hill Ranch subdivision.

The third ownership of 23.55 acres includes Tax Lots 700 and 800, T3S, R1W, Section 30C. To the east are developed lots of 10 acres or less. Directly south across Kramien Road is the Ladd Hill Ranch subdivision.

The fourth ownership, 42.11 acres, includes Tax Lots 300, 400, 401 and 500, T3S, R1W, Section 30C. This ownership is located on Kramien Road and borders Yamhill County on the west. Over half of the ownership is open land with the remainder covered with trees and brush. To the south are the Ladd Hill Ranch subdivision and three other ownerships of less than 10 acres.

Plan: Rural

Zoning: RRF-5

APPENDIX "C"

AREA	ACTION	DESCRIPTION OF PROPERTY AFFECTED BY ORDER (As described in Petition for Review)
Y-14	Reversed	Carmel Estates Property
R-1	Remanded	All 30, approximately 175 acres
R-2	Remanded	All
R-3	Remanded	All but small ownerships at south and east borders of the area
R-4	Remanded	All
R-5	Remanded	Ownerships of 31 and 14.7 acres near north end of area 5; ownerships of 22 and 67 acres surrounding lake near south end of area 5
R-6	Remanded	Northern portion
R-7	Remanded	All
R-9	Remanded	All
R-12	Remanded	All
R-14	Remanded	All except cluster of small ownerships at southern end of area
R-17	Remanded	All
R-20	Remanded	Southern portion
R-21	Remanded	All
R-23	Remanded	All except small ownerships at east end of area and in Section 4 bordering Waldow Farm
R-24	Remanded	All
R-25	Remanded	Ownerships in Section 33 between areas R-23 and 24 and 38 acre ownership in Section 28.

1	R-28	Remanded	Seven parcels in southwest Section 24 and northwest Section 25 joining "forest" area F-8
2			
3	R-29	Remanded	All
4	R-31	Remanded	All except north half of northwest quarter of Section 30, northern border of Section 25
5			
6	R-32	Remanded	All
7	R-33	Remanded	Sixty acre block in Sections 4 and 33
8			
9	R-34	Remanded	All
10	R-35	Remanded	Two ownerships, 25 and 19.5 acres, west end of area
11	R-37	Remanded	All
12	R-38	Remanded	All
13	R-39	Remanded	All
14	R-41	Remanded	All
15	R-42	Remanded	All
16	R-43	Remanded	All
17	R-44	Remanded	All
18	R-46	Remanded	All
19	R-47	Remanded	All
20	R-48	Remanded	South of Wheeler Road, except Carriage Estates and Whistleville Subdivisions
21			
22	R-49	Remanded	Three ownerships - 22, 30 and 24.6 acres - along northern border of area
23			
24	R-50	Remanded	20.65 acre ownership in Section 31B
25	R-57	Remanded	40.2 acre ownership on either side of Judd Road
26			

1	R-58	Remanded	Portion southeast of Eastdale Road, east of Highway 224 and north of Eagle Creek and Highway 211.
2			
3	R-59	Remanded	Western portion south of Eagle Creek and Highway 211 and west of Filbert Road
4			
5	R-64	Remanded	39.10 acre ownership at northeast corner
6	R-40	Remanded	52.10 acre ownership in Section 16A
7	Y-4	Remanded	All
8	Y-6	Reversed	All
9	Y-8	Remanded	All
10	Y-9	Remanded	All
11	Y-11	Reversed	All
12	Y-12	Reversed	All

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