

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioners appeal Lane County's approval of a zone change
4 from General Rural-10 (GR-10) to Rural Residential-2 (RR-2) for
5 a 12 acre parcel located in an unincorporated area known as
6 Pleasant Hill. Petitioners ask that we reverse and remand the
7 county's decision.

8 Petitioners set forth four assignments of error. The first
9 assignment of error is that the county failed to comply with
10 Goals 2, 3 and 4 in that the county's attempt to take an
11 exception based upon the factors in Goal 2, Part II, Exceptions
12 was not done as part of the county's comprehensive plan.

13 Petitioners' second assignment of error is that the county's
14 findings in support of the exception were insufficient and not
15 supported by evidence in the record. The third assignment of
16 error challenges the county's findings that the property was
17 "committed" to non-resource use on the basis that the findings
18 are insufficient and not supported by the record. Petitioners'
19 fourth assignment of error is that the county's findings are
20 insufficient and not supported by evidence in the record to
21 justify compliance with Goals 6 and 10.

22 The county concedes that its attempt to take an exception
23 based upon the criteria in Goal 2 was improper based upon our
24 holding in Wright v Marion County, 1 Or LUBA 164 (1980),
25 because the exception was not taken as part of the county's
26 comprehensive plan. The county does, however, assert that its

1 determination that the property is committed to non-resource
2 use is sufficient to avoid compliance with Goals 3 and 4 so
3 that even without the formal Goal 2 exception the decision to
4 rezone the property for non-resource use should stand. We
5 conclude, however, that the county's findings in support of its
6 determination that the property is committed to non-resource
7 use are insufficient to justify that determination. Our
8 conclusion is mandated, we believe, by recent opinions of this
9 Board in which LCDC has concurred.

10 STATEMENT OF FACTS

11 The decision in this case rezones a 12 acre parcel of land
12 for two acre minimum lot sizes. The county determined that the
13 soils on the property were such as to make both Goals 3 and 4
14 applicable. The property is designated in the applicable Lane
15 County Comprehensive Plan as suitable for "rural residential"
16 development.

17 Attached to this opinion as Appendix "A" is a vicinity map
18 which shows both the general and specific location of the
19 property, identified on the vicinity map as Tax Lot 1510 and
20 1503. As can be seen from the vicinity map, the property is
21 located near the unincorporated community of Pleasant Hill.
22 Pleasant Hill is designated as a rural service center in the
23 county's unacknowledged subarea plan. This property is
24 apparently shown in that plan as within the Pleasant Hill rural
25 service center.

26 Tax Lot 1505 located between the property and the

1 Willamette Highway was recently zoned for commercial use by
2 Lane County. As found by the county, the land to the east of
3 the subject property is presently zoned agriculture, grazing
4 and timber (AGT-5) and the land to the south, southeast and
5 west is presently zoned farm forestry, 20 acre minimum lot
6 sizes (FF-20). On the north side of the Willamette Highway
7 there is an area zoned for commercial uses which presently
8 includes a bank, a drug store and a grocery store, as well as
9 rural subdivisions.

10 The rezoning request includes both Tax Lots 1503 and 1510.
11 It is not altogether clear from the findings, but we believe
12 Tax Lots 1507, 1503 and 1508 are undeveloped. They are all
13 roughly 12 acres in size. Tax Lots 1509 and 1513 apparently
14 contain residences. Tax Lot 1510 apparently contains a
15 residence and two sheds. A private driveway has been
16 constructed which links Tax Lots 1506, 1509, 1510, 1513, 1507,
17 1503 and 1508 with the Willamette Highway. The private
18 driveway itself apparently consists of two separate tax lots,
19 Tax Lots 1511 and 1512. See vicinity map.

20 In its findings concerning commitment of Tax Lots 1503 and
21 1510 to non-resource use, the county addressed Goal 3 as
22 follows:

23 "The property consists of Class II, III and IV
24 soils and is presently used as a small garden and
25 pasture. The rear third of the Property is covered
26 with scrub oak and has Class IV wet soils. The staff
report states that because of these soils an Exception
to this goal is required. Applicant has submitted
testimony and evidence in support of a finding that

1 the Property is located in an area that is both
2 physically developed and irrevocably committed to
3 non-farm and non-forest uses. LCDC has issued a
4 "position paper" entitled "COMMON QUESTIONS CONCERNING
5 THE EXCEPTIONS PROCESS AS IT RELATES TO LAND USE
6 DECISION PRIOR TO AN ACKNOWLEDGED COMPREHENSIVE PLAN"
7 wherein LCDC states that an Exception to Goals 3,
8 Agricultural Lands, and 4, Forest Lands, is not
9 required if findings can be made that the land is:

10 "(a) physically developed or built upon, or

11 "(b) irrevocably committed to non-farm or
12 non-forest uses in urban or rural areas.'

13 "The 'position paper' then sets forth the
14 following land-use characteristics that must be
15 considered in order to establish that either one of
16 the 'built or committed' findings stated above has
17 been supported:

18 "(a) adjacent uses;

19 "(b) public services;

20 "(c) parcel size and ownership patterns;

21 "(d) neighborhood and regional
22 characteristics; and

23 "(e) natural boundaries.'"

24 "Although this 'position paper' is not an
25 official or binding agency rule, it does provide
26 guidance in how to address and consider Goals 3 and 4.

27 "(a) Adjacent uses--There are eleven residences
28 in the immediate vicinity of the Property and rural
29 subdivisions located directly across Highway 58.
30 Small parcels with residences also are located east of
31 the Property and south of Highway 58 near the school
32 and fire station. Directly north and adjacent to the
33 Property is a parcel (Tax Lot 1505 on attached map)
34 containing 12-1/2 acres and zoned C-2, SR,
35 Neighborhood Commercial. It was recently approved for
36 a commercial subdivision in July. Only the larger
37 parcels located south are used for agricultural
38 purposes and even then primarily for grazing and
39 pasture. Immediately south of the Property is a large
40 area of trees, including scrub oak that prevents any
41 type of agricultural use. The general character of

1 the area which includes the Property is rural
2 residential with supporting commercial and public
3 facilities. Finally, the RR-2 zoning will serve to
4 buffer the more intensive commercial uses from the
5 FF-20 zoning south of the Property.

6 "(b) Public services--The subject property can be
7 served with electricity by Pacific Power & Light and
8 telephone service by Pacific Northwest Bell. The
9 Property is in the Pleasant Hill School District and
10 the Pleasant Hill Fire District. Neither district has
11 expressed any concern with this zoning request.
12 Police protection is provided by the Lane County
13 Sheriff's Department. Lots created by this zone
14 change will be served by individual septic tanks and
15 wells. All necessary public facilities and services
16 are presently provided to the property and creation of
17 five additional lots will not affect the provision of
18 those services or require additional [sic] public
19 facilities and services to be extended to the area.
20 The opponents noted the lack of sewers and a community
21 water supply. However, there is no requirement that
22 these facilities be provided and in fact the Subarea
23 Plan notes that two-acre lots are appropriate without
24 provision of these services.

25 "(c) Parcel size--Tax Lot 1510 is one acre in
26 size and parcels generally range in size from
27 one-quarter of an acre to twelve acres in the
28 immediate vicinity of the Property. Across Highway
29 58, lots are quite small and resemble an urban
30 subdivision. Also, a commercial subdivision has been
31 approved on the property (12-1/2 acres) directly north
32 of the Property which will result in intensive
33 commercial development.

34 "(d) Neighborhood and regional
35 characteristics--The general area on both sides of
36 Highway 58 is rural residential with some community
37 commercial development existing and planned. Further
38 south the uses are more rural but the plan does not
39 provide for continued residential development south of
40 the subject property. That property located south of
41 the Property is designated Rural, Woodland and Grazing
42 in the Subarea Plan and 20-acre parcel minimums are
43 recommended. The Subarea is generally rural, although
44 the Pleasant Hill area is identified as a rural
45 service center wherein future development is most
46 appropriate.

1 "(e) Natural boundaries--The size of parcels
2 south of the Property are considerably larger and
3 development would not likely be permitted. Also,
4 there is a stand of scrub oak and vegetation that
5 extends south from the property. A creek is located
6 just south of the Property and separates it from other
7 rural property.

8 "In general, the area which includes the Property
9 is committed to rural residential uses by reason of
10 existing development, present zoning and the
11 comprehensive plan for the area. Also, the Property
12 already has a residence and two sheds located thereon
13 and therefore is partially built upon."

14 Other findings adopted by the county as part of this rezone
15 decision also addressed matters related to whether the subject
16 property was committed to non-resource use.

17 "This land has very limited agricultural
18 potential by reason of its size and location near
19 existing residential and commercial development.

20 "***

21 "Goal 4 Forest Lands--The subject property
22 contains Class IIIC woodlands soils and therefore Goal
23 4 applies. However, as stated in the discussion under
24 Goal 3, the subject parcel can either be found to be
25 irrevocably committed to non-forest uses or an
26 exception to this goal is justified based upon the
findings and information provided therein. That
discussion is incorporated under this goal by
reference hereto."

 The county also addressed specifically concerns raised by
petitioners herein (opponents below), one of which was that the
county had not properly determined that the subject property
was committed. To this the county responded as follows:

 "The Colemans' attorney presented testimony
regarding adjacent uses, provision of public services
and facilities, parcel size and ownership patterns in
the vicinity of the Property, neighborhood and
regional characteristics and natural boundaries. That
testimony was considered and weighed against the

1 testimony and evidence presented by the Applicant and
2 the planning staff. Although there is room for
3 dispute as to any one of the criteria set forth in the
4 Exceptions paper as applied to this zone change, we
5 believe a comparative balancing of the opponents'
6 testimony versus that of the Applicant and his
7 attorney, establishes that the area which includes the
8 Property is "committed" to rural residential and
9 community commercial uses. By reason of the existing
10 commercial development presently adjacent to or near
11 the Property and the proposed development which will
12 be located directly adjacent to the Property, we
13 believe the area which includes the Property is
14 irrevocably committed to non-farm and non-forest
15 uses. This is not to say that other areas, more rural
16 in character and located south of the Property are
17 similarly situated. In fact, rezoning of this
18 property will buffer the more intense commercial
19 activities from the rural lands located south and
20 across the creek located just beyond the southern
21 boundary of the Property. Additional public services
22 and facilities will not be required for development of
23 this property in two-acre lots and any further or more
24 intensive division of this property would not be
25 permitted until more urban facilities and services,
26 primarily sewer and water, are provided to this area.
Finally, it is true that parcel sizes south, southwest
and southeast of the Property are considerably larger
than the Subject Property. However, parcel sizes
directly adjacent to and across Highway 58 from the
Subject Property are even smaller than two acres.
Therefore, given the existing level of development and
the location of this property, the RR-2 zoning
district will provide a level of development that is
appropriate, given the location of this property with
regard to more rural and more urban properties on
either side.

20 "Both JoAnn Coleman and James Laird discussed the
21 agricultural potential of the area which includes this
22 property. While this potential does exist on larger
23 parcels, it is also true, as noted by the Applicant,
24 that smaller parcels of two to five acres does [sic]
25 permit more intensive development and also
26 agricultural use in the form of limited grazing and
small garden plots. The opponents' property, on the
other hand, is much larger than the subject property
and is capable of more intensive agricultural
management by reason of this larger size. Again,
given the size and location of the subject property
with respect to rural lands to the south and

1 commercial lands to the north, the RR-2 zoning seems
2 most appropriate for this property given those site
3 characteristics. It should be emphasized that the
4 justification for rezoning this property will not
5 extend to all properties in the Pleasant Hill rural
6 service center nor will it apply to those properties
7 adjacent to or outside of that rural service center."

8 OPINION

9 The most recent opinion issued by this Board and concurred
10 in by LCDC pertaining to the commitment test was 1000 Friends
11 of Oregon v Douglas County, ___ Or LUBA ___ (LUBA No. 81-011,
12 Slip Op 9/30/81). We summarized in that case what is necessary
13 in order for a county to properly determine whether lands are
14 committed to non-resource use:

15 "We have recently with LCDC's concurrence
16 attempted to discuss what must be shown in order to
17 justify a determination that lands otherwise defined
18 as agricultural lands or forest lands within the
19 meaning of Goals 3 and 4 respectively are committed
20 irrevocably to non-resource use. See, generally, 1000
21 Friends of Oregon v Clackamas County, ___ Or LUBA ___
22 (LUBA No. 80-060, 1981); 1000 Friends of Oregon and
23 City of Sandy v Clackamas County, ___ Or LUBA ___
24 (LUBA Nos. 80-075 and 80-076, 1981); and Cohen v
25 Clackamas County, ___ Or LUBA ___ (LUBA No. 81-001,
26 1981). Both 1000 Friends of Oregon v Clackamas,
supra, LUBA No. 80-060, hereinafter referred to as
RUPA I and 1000 Friends of Oregon v Clackamas County,
supra, LUBA No. 80-075 and 80-076, hereinafter
referred to as RUPA II, involved attempts by Clackamas
County to take an exception to the county's
comprehensive plan for significant numbers of acres of
agricultural and forest land on the basis that the
lands were committed to non-resource use. In RUPA I,
petitioner challenged 2,812 acres located within 22
separate areas out of a total of approximately 37,000
acres designated by Clackamas County for rural
residential use. In RUPA II, petitioner challenged
the validity of Clackamas County's determination of
commitment with respect to approximately 9,000 acres
contained in some 34 areas out of a total of
approximately 33,000 acres designated by Clackamas
County for non-resource use. We stated in RUPA I what

1 was required in order to arrive at a conclusion of
2 irrevocable commitment:

3 "****We hold in sum that a conclusion of
4 irrevocable commitment to non-resource (non-farm
5 or non-forest) use must at a minimum be based on
6 detailed findings, supported by substantial
7 evidence showing that the subject land cannot now
8 or in the foreseeable future be used for any
9 purpose contemplated in statewide goals 3 and/or
10 4 because of one or more of the following:

- 11 "'(a) Adjacent uses;
 - 12 "'(b) Parcel size and ownership patterns⁵
 - 13 "'(c) Public services;
 - 14 "'(d) Neighborhood and regional
15 characteristics;
 - 16 "'(e) Natural boundaries;
 - 17 "'(f) Other relevant factors."
- 18 RUPA I, Slip Op at 13-14 (Footnote omitted).

19 "Concerning our scope of review as to a county's
20 determination of commitment, we said:

21 "'Therefore, it is the determination of this
22 Board that the role of LUBA is to first determine
23 whether the findings address all relevant
24 criteria and are supported by substantial
25 evidence. If there are insufficient findings,
26 then the conclusion is not supported. Only if we
decide sufficient findings exist (i.e., findings
which address all relevant criteria and are
supported by substantial evidence) will we apply
the test of whether a reasonable person would be
compelled to conclude irrevocable commitment to
non-resource use exists.'" RUPA I, Slip Op at 21.

"In both RUPA I and RUPA II, we emphasized the
absolute necessity for the findings to explain why the
adjacent uses, parcel size and ownership patterns, etc.,
which existed for a particular area lead the county to a
conclusion of commitment for the area. For example, with
respect to the factor of "adjacent uses," we said in RUPA I:

"Findings regarding adjacent uses must
contain a precise statement on why after listing
and considering the existing uses and location of
residences and buildings on these areas, the
property is irrevocably committed to non-farm or
non-forest use.'" RUPA I, Slip Op at 14-15.

1 "In RUPA II, we said that information with respect to lot
2 sizes, the number of ownerships, the total number of
3 dwelling units in an area as well as the average number of
4 acres per dwelling unit within an area was not sufficient
5 to show that land was committed to non-farm or non-forest
6 related purposes in the absence of an explanation why this
7 information lead the county to conclude that resource use
8 was impossible.

9 While Lane County's findings in support of its
10 determination of commitment address the required criteria as
11 set forth above,¹ the county's findings cannot be said to
12 compel a reasonable person to conclude that resource use of the
13 subject 12 acre parcel is now no longer possible. The county
14 specifically acknowledges in its findings that the soils on the
15 subject property are suitable for pasture, crops, orchard and
16 Douglas Fir propagation. The county does not explain, however,
17 why it is that because of surrounding "development" and a
18 stream and a fairly large stand of scrub oak not even located
19 on the property the subject property cannot be used as an
20 orchard or for row crops. Yet, as we stated in RUPA I, RUPA II
21 and 1000 Friends of Oregon v Douglas County, supra, an
22 explanation why the factors identified in the commitment test
23 preclude any potential resource use of the property is
24 absolutely necessary:

25 "When the county finds that small ownerships
26 nearby 'commit' land to non-resource use it must
27 explain why. Still v Marion County, supra. The
28 existence of homesites nearby does not necessarily
29 indicate that the subject property is lost to resource
30 management. 1000 Friends v Marion County, supra. It
31 may be that residents on the small acreages keep
32 livestock or do intensive, small scale farming and

1 would not interfere with farm or forest management on
this 80.61 acre block." FUPA I, Slip Op at 24.

2 While it may be that in some circumstances a separate
3 explanation of why certain facts leads to a conclusion of
4 commitment may be unnecessary because the facts themselves
5 compel the conclusion of commitment, that is not the case
6 here. The county has not specifically addressed what farm or
7 forest uses may still take place on the subject property and
8 what income might be derivable from such uses. The county has
9 also not addressed in its findings what uses are or are capable
10 of taking place on adjoining Tax Lots 1507 and 1508. Moreover,
11 the findings and the vicinity map clearly show that the subject
12 parcel is really bordered by development on only one side, the
13 north side. We addressed contiguity of development and its use
14 as a basis for concluding that a parcel is committed in 1000
15 Friends of Oregon v Douglas County, supra. In that case, the
16 county made the assumption that if a site or area challenged
17 was bordered on two sides by physically developed parcels, the
18 site or area could be deemed committed to non-resource use. In
19 response to this assertion, we said:

20 "The fallacy with the county's assumption here is
21 that contiguity to development does not necessarily
22 equal commitment, particularly where that contiguity
23 only exists on two sides. If it did, as we noted in
Kerns v Pendleton, 1 Or LUBA 1 (1980) much farm land
24 adjacent to urban areas could be deemed committed to
25 non-resource use. The contiguous development, to be
26 used as a basis for commitment, must be such as to
preclude resource use of the property. There must be
a compelling explanation as to why the contiguous
development is so extensive as to preclude resource
use. Development of an intense nature (i.e, one

1 quarter acre lots) on all four sides of a three acre
2 parcel would require little in the way of a detailed
3 explanation as to why the three acre parcel was lost
4 to resource use. Sparse development (i.e, residences
5 on two to five acre parcels) contiguous to a ten acre
6 parcel on two or fewer sides would require a very
7 detailed explanation, if one were even possible, as to
8 why the ten acres was so impacted by development as to
9 be lost for resource purposes."

10 The facts in this case simply indicate that this parcel is
11 bordered by commercial development on one side and by resource
12 use or potential resource use on the remaining three sides. No
13 explanation is made as to why the subject property by itself or
14 perhaps through sale or lease to one of the adjoining 12 acre
15 parcels could not be put to some potential resource use.

16 "****The county also offers no explanation as to
17 why a ten acre or larger parcel, if offered for sale
18 or lease at its value for farm use or forest use (see
19 Cohen v Clackamas County, ___ Or LUBA ___ (1981), LUBA
20 No. 81-001), could not be joined with an adjacent,
21 developed parcel and thereby made into a farm or
22 forest unit much greater than ten acres in size."
23 1000 Friends v Douglas Co, supra, Slip Op at 12.

24 We conclude, accordingly, that Lane County has failed to
25 adequately demonstrate that the subject 12 acre parcel is
26 committed to non-resource use. The county's decision is,
27 therefore, remanded for further proceedings not inconsistent
28 with this opinion.²

1 COX, Referee, Dissenting.

2 I dissent. Lane County has applied the criteria and made
3 the required considerations. Its decision should be affirmed.
4 I believe the opinion should be as follows.

5 FACTS

6 The subject parcel, consisting of plus or minus 12 acres,
7 is located approximately 1/4 mile south of Pleasant Hill.
8 Pleasant Hill is designated a rural service center in the Lane
9 County Comprehensive Plan (unacknowledged). The site is
10 occupied by a mobile home and two sheds, all of which are
11 located near the north end of the property. A majority of the
12 property slopes southward, is covered with grasses and has been
13 used for limited agricultural purposes such as grazing cattle
14 for the landowners' consumption. (Record 60, 66). The property
15 contains SCS Class IIe, IIIe and IVw soils. The soils are
16 suitable for pasture, crops, orchard and Douglas Fir
17 propagation. (Record 66). The property to the north of the
18 subject property is zoned C-2/SR, a commercial district with
19 site review requirements, and is partially occupied by existing
20 commercial development (Record 6). Still further to the north
21 and across State Highway 58 is another area zoned commercial
22 which presently includes a bank, drug store and grocery store
23 (Record 6). Several subdivisions and rural residential
24 homesites exist along Highway 58 in this vicinity (Record
25 11-12). The subject property is the middle of three similarly
26 shaped and sized parcels. The parcels adjacent on the east and

1 west are also in small scale hobby farm type use (Record 34).
2 Approximately 30-60 feet south of the three parcel's southern
3 property line is a year around stream which is up to 30 feet
4 wide in the winter and varies in depth from ten feet in the
5 winter to one foot in the summer. The land further to the
6 south is held in large parcels containing woodlot and
7 agricultural uses (Record 34). Land further to the west and
8 east of the subject property than the adjacent similar parcels
9 is held in large parcels and is in agricultural use (Record
10 55). The subject parcel gains access to Highway 58, which is
11 approximately one quarter mile away, via private roads.

12 The applicable Lane County Comprehensive Plan is the Lower
13 Middle Fork Subarea Plan adopted in 1974 which designates the
14 subject property as "Rural Residential" (Record 26, 52). The
15 intent and purpose of the rural residential designation is to

16 "...[p]rovide opportunities for living in rural
17 residential or rural neighborhood settings; "(1)
18 located within or adjacent to communities designated
19 or with the character of rural service centers, minor
20 or major development centers. Can accommodate some
21 expansion due to close proximity to necessary public
22 facilities and services, and if located in an area
with moderate development constraints; "(2) Rural
neighborhoods located in more isolated portions of the
county or existing rural neighborhoods which generally
have severe development constraints. Some infilling
may be appropriate in existing areas not otherwise
appropriate for expansion." Findings, p. 4.

23 The proposed zoning could allow up to five two-acre homesites
24 on the subject property.

25 DECISION

26 The parties to this appeal agreed to delay the decision in

1 this case pending our decision in 1000 Friends of Oregon v.
2 Clackamas County, _____ Or LUBA _____ (LUBA No. 80-060, 1981),
3 (hereinafter referred to as RUPA I). In RUPA I this Board,
4 with the approval of LCDC, developed what we consider to be a
5 concise statement of the findings a local government must make
6 in determining whether or not the LCDC committed lands test has
7 been met. In RUPA I it was determined that the test for
8 commitment should be as follows:

9 "A conclusion of irrevocable commitment to
10 nonresource (nonfarm or nonforest) use must at a
11 minimum be based on detailed findings, supported by
12 substantial evidence, showing that the subject land
cannot now or in the foreseeable future be used for any
purpose contemplated in statewide goals 3 and/or 4
because of one or more of the following:

13 "(a) adjacent uses; ..

14 "(b) parcel size and ownership patterns;

15 "(c) public services;

16 "(d) neighborhood and regional characteristics;

17 "(e) natural boundaries;

18 "(f) other relevant factors." RUPA I, p. 13-14.

19 The majority opinion in this case fails to point out two
20 very important statements in RUPA I which would indicate that
21 the Lane County decision should be upheld. First, it was
22 pointed out in RUPA I

23 "****the determination that some resource lands are
24 'irrevocably committed' to nonresource use and thus
25 'no longer available for farm use or forest uses' is
26 not a precise technical or legal equation. It is a
judgment call based on certain required facts." RUPA
I, p. 12-13. (citing Yamhill County acknowledgment).

1 Second, LCDC modified LUBA's proposed opinion to emphasize the
2 need for a weighing of the factors (see RUPA I, Footnote 6).

3 In RUPA I it is stated after LCDC modification:

4 "The above list indicates the factors which a
5 local government must consider in analyzing whether
6 irrevocable commitment to non resource use exists. In
7 certain situations the facts related to any one of the
8 factors may be themselves justify a conclusion of
9 irrevocable commitment. However, factors relating to
10 the subject parcel itself cannot alone justify a
11 conclusion of irrevocable commitment. Examples of
12 factors which may by themselves justify such a
13 conclusion are factors (a) (adjacent uses) and (b)
14 (parcel size and ownership patterns).⁶ The more
15 common situation, however, will probably necessitate
16 consideration of several, if not all, of the factors
17 in combination." RUPA I, page 14. (Emphasis added).

18 After reviewing the county's findings regarding the
19 commitment test with the two above statements in mind, it is my
20 determination the test has been satisfactorily applied to the
21 subject property. I also believe the county's determination
22 that the property is committed to nonfarm and nonforest uses is
23 supported by substantial evidence. I further believe that "a
24 reasonable person" could be compelled to conclude, when viewing
25 the findings and record as a whole, that irrevocable commitment
26 to non-resource use exists.

27 In originating the committed lands test in 1000 Friends of
28 Oregon v. Marion County, (LCDC No. 75-006), LCDC gave examples
29 of what it considered committed and uncommitted land. It
30 basically viewed the question as fitting into a continuum or
31 spectrum. On one end of the committed lands spectrum is a
32 clearly committed parcel, "surrounded by intensive

1 development." At the opposite end of the spectrum is land with
2 only a few, if any, rural residential homesites nearby. In the
3 present case the subject parcel is bordered by intensive
4 commercial development on the north, a natural boundary on the
5 south, and rural residential use similar to that existing and
6 proposed on the subject parcel to the immediate east and west.
7 Given LCDC's statement that the determination of commitment is
8 a "judgment call" rather than a "precise technical or legal
9 equation," the question before the Lane County Board of
10 Commissioners was, therefore, whether the subject property lies
11 more closely to the committed end of the commitment spectrum.
12 The county decided that the character of the subject property,
13 considering all the factors involved, is closer to the
14 committed side of the spectrum and, therefore, decided that the
15 land is committed to non-resource use. The county's findings
16 reflect a weighing of the evidence against the policies which
17 are designed to limit rural development while recognizing the
18 fact that some rural development centers now exist. To ask for
19 more is excessive. As was said by this Board with LCDC
20 approval in Medford v. Jackson County, 2 Or LUBA 387, 390
21 (1981):

22 "The goals are not so inflexible that they won't
23 recognize the existence of development which has
24 already taken place. See e.g. 1000 Friends v. MSD,
25 LCDC No. _____. To apply a requirement so strictly
26 that no existing quasi-urban areas can be recognized
outside urban growth boundaries would make
non-conforming uses out of every such use in areas
like White City.² This rigid interpretation of goal
14 could adversely affect the quality of life in such

1 areas.

2 "2We use the term 'quasi-urban' to define those
3 uses which are urban in character but not located
4 within an urban growth boundary because of the absence
5 of an incorporated city."

6 The majority opinion seems to ignore this sage reasoning.
7 In keeping with the above quote Lane County stated, regarding
8 rural service centers (citing its "Lower Middle Fork Subarea
9 Plan"):

10 "With few exceptions, local employment
11 possibilities are limited in these communities and
12 there is a minimum of investment in public facilities
13 to serve increased population. The designation of
14 rural 'service center' would allow for the provision
15 of limited services, particularly commercial services,
16 to serve the local population. Some infilling of
17 development on lots of one acre or more may be
18 possible in some communities if subsurface sewage
19 disposal can be accommodated. However, the creation
20 of small lots and acreages around these communities
21 should be discouraged." Findings, p. 5.

22 As further evidence of the obvious weighing of conflicting
23 considerations the county points to the "matrix" for the
24 subarea plan which contains a key designation factor for rural
25 "residential use category" which is intended to guide and
26 control development within that land use category. In applying
27 this matrix to the subject property the county considered,
28 among other things, "minimum parcel size." Minimum parcel size
29 under the subarea plan's matrix for rural residential land use
30 states:

31 "In or adjacent to a rural service, minor or
32 major development center with moderate development
33 constraints, parcel sizes must be a minimum of 2
34 acres. May be reduced to 1 acre with an acceptable
35 community water supply system and if not detrimental

1 to the natural environment or significant burden on
2 other community facilities. In the more isolated
3 portions of the County, parcel sizes must be a minimum
4 of 5 acres." Findings, p. 5.

5 With the above considerations in mind (as well as others
6 which are set forth in the county's findings attached as
7 Appendix B), the Lane County Board of Commissioners addressed
8 the factors required by the "committed lands test," supra, and
9 made findings thereon. The county found regarding those
10 individual factors as follows.

11 Adjacent Uses

12 As was held in RUPA I, supra, findings addressing adjacent
13 uses

14 "...must contain a precise statement on why after
15 listing and considering the existing uses and location
16 of residences and buildings on these areas, the
17 property is irrevocably committed to nonfarm or
18 nonforest use." RUPA I, p. 14-15.

19 The county found regarding adjacent uses:

20 "There are eleven residences in the immediate
21 vicinity of the Property and rural subdivisions
22 located directly across Highway 58. Small parcels
23 with residences also are located east of the Property
24 and south of Highway 58 near the school and fire
25 station. Directly north and adjacent to the Property
26 is a parcel (Tax Lot 1505 on attached map) containing
12-1/2 acres and zoned C-2, SR, Neighborhood
Commercial. It was recently approved for a commercial
subdivision in July. Only the larger parcels located
south are used for agricultural purposes and even then
primarily for grazing and pasture. Immediately south
of the property is a large area of trees, including
scrub oak that prevents any type of agricultural use.
The general character of the area which includes the
Property is rural residential with supporting
commercial and public facilities. Finally, the RR-2
zoning will serve to buffer the more intensive
commercial uses from the FF-20 zoning south of the
Property." Findings, p. 8-9.

1 The record contains evidence that the entire area north of
2 the subject property, to and including the Pleasant Hill Rural
3 Service Center, is in commercial and residential use or
4 development. (Record 5-6, 9, 11-12, 21, 26-27, 52, 56, 57).
5 The record indicates immediately adjacent to the east and west
6 are parcels in rural residential type farm use, much the same
7 as may possibly be undertaken on the subject property under the
8 requested RR-2 zone such as a few head of livestock, a few
9 horses and some fowl (Record 34).

10 Respondent points to LCDC's decision in Milhoan v. Jackson
11 County, (LCDC 78-013), wherein petitioners claimed that their
12 farm should have been included within the Medford Urban Growth
13 Boundary because it was committed to non-resource use. In
14 discussing the issue of commitment, LCDC stated that
15 "Commitment does not mean a present offer by a developer, but
16 rather a reasonable possibility of development within the next
17 22 years. (Opinion and Final Order, pg. 3)." The 22 years
18 would seem to have arisen in that case from the fact that the
19 planning was to take the county through the year 2000. The
20 1978 case would have been 22 years from the year 2000.

21 Even though Pleasant Hill has no formal urban growth
22 boundary, the evidence in the record indicates that it is
23 developing and that a "reasonable possibility of development"
24 around the subject property by 2000 exists. LCDC's decision in
25 the Milhoan case indicates that in deciding the commitment
26

1 issue not only the present state of development but also
2 development trends are relevant and should be considered. The
3 county found that Pleasant Hill is developing around a core
4 approximately 1/4 mile north of the subject property. The
5 present and future core development in this commercial area
6 impact the present and future resource use of the subject
7 property. The majority opinion only addresses the impact of
8 present development on the subject property, it ignores the
9 "reasonable possibility of development" based on the past and
10 future.

11 Parcel Size and Ownership Patterns

12 As we held in RUPA I, supra, findings regarding parcel size
13 and ownership in and adjacent to these areas

14 ..."must contain detailed information on how any
15 existing subdivision or partitioning pattern came
16 about and whether findings against the goals were made
17 at the time of such partitioning or subdivision. Past
18 partitioning or subdivision decisions made without
19 findings against the goals, when required, should not
20 be used to justify new partitioning under the
21 committed test." RUPA I, p. 15.

22 As regards parcels size and ownership patterns, the county in
23 its findings states:

24 "Tax Lot 1510 is one acre in size and parcels
25 generally range in size from one-quarter of an acre to
26 twelve acres in the immediate vicinity of the
Property. Across Highway 58, lots are quite small and
resemble an urban subdivision. Also, a commercial
subdivision has been approved on the property (12-1/2
acres) directly north of the Property which will
result in intensive commercial development."
Findings, p. 9.

A review of the area map in the record indicates that not

1 only the subject parcel, which is Tax Lot 1503, but also the
2 neighboring parcel to the west (Tax Lot 1507) and to the east
3 (Tax Lot 1508) have been further partitioned to contain small
4 parcels near their northern boundaries. Tax Lot 1507 has on
5 its northern boundary Tax Lot 1509; Tax Lot 1503 (subject
6 property) has on its northern boundary Tax Lot 1510 and Tax Lot
7 1508, to the east of the subject property, has on its northern
8 boundary Tax Lot 1513. Tax Lots 1509, 1510 and 1513 all appear
9 to be approximately one acre in size and contain development.

10 The county's findings and the record do not indicate any of
11 the details which led up to the existing subdivisions and
12 partitionings in the area. Therefore, standing alone, the
13 county's findings on parcel size are not sufficient. While the
14 parcel size and ownership findings by the county are not
15 sufficient by themselves to justify commitment, they
16 nevertheless go to indicate an overall pattern of development
17 which was considered by the county.

18 Public Services

19 When considering public services it was held in RUPA I,
20 supra, that

21 "...findings regarding public services must
22 detail the level of actual public services impacting
23 the land and a precise statement of why the existence
of those services irrevocably commit the land to
nonfarm or nonforest use." Findings, p. 15.

24 As regards public services the county found:

25 "The subject property can be served with
26 electricity by Pacific Power & Light and telephone
service by Pacific Northwest Bell. The Property is in

1 the Pleasant Hill School District and the Pleasant
2 Hill Fire District. Neither district has expressed
3 any concern with this zoning request. Police
4 protection is provided by the Lane County Sheriff's
5 Department. Lots created by this zone change will be
6 served by individual septic tanks and wells. All
7 necessary public facilities and services are presently
8 provided to the property and creation of five
9 additional lots will not affect the provision of those
10 services or require additional [sic] public facilities
11 and services to be extended to the area. The
12 opponents noted the lack of sewers and a community
13 water supply. However, there is no requirement that
14 these facilities be provided and in fact the Subarea
15 Plan notes that two-acre lots are appropriate without
16 provision of these services." Findings, p. 9.

9 The evidence in the record supports the county's finding.

10 While the county acknowledges that the level of public services
11 in the area does not in itself commit the subject property to
12 non-resource use, it indicates that the property is provided
13 with services sufficient enough to support the density the RR-2
14 district allows. It is important to note that the county found
15 the following regarding water supply:

16 "Generally good ground water supplies.
17 Development proposal must demonstrate that additional
18 development will not deplete the water supplies for
19 existing uses; will not preempt establishing other
20 primary designated land uses in the future, or exceed
21 the capacity to provide adequate water to the proposed
22 development." Findings, p. 5.

20 As regards sewage disposal, the county found:

21 "If the Property is not capable of being divided
22 into two-acre lots by reason of soil restrictions and
23 constraints, then a tentative plat of such a
24 subdivision would not be approved. See Lane Code, Ch
25 13, 'Land Divisions.'"

24 Neighborhood and Regional Characteristics

25 Regarding neighborhood and regional characteristics the
26

1 test in RUPA I indicates that

2 "...[f]indings regarding neighborhood and regional
3 characteristics must be detailed and precisely state
4 why those characteristics irrevocably commit the land
5 to nonfarm or nonforest use." RUPA I, p. 15.

6 The Lane County Board of Commissioners found regarding
7 neighborhood and regional characteristics as follows:

8 "The general area on both sides of Highway 58 is
9 rural residential with some community commercial
10 development existing and planned. Further south the
11 uses are more rural but the plan does not provide for
12 continued residential development south of the subject
13 property. That property located south of the Property
14 is designated Rural, Woodland and Grazing in the
15 Subarea Plan and 20-acre parcel minimums are
16 recommended. The Subarea is generally rural, although
17 the Pleasant Hill area is identified as a rural
18 service center wherein future development is most
19 appropriate." Findings, p. 9.

20 Although not contained under the heading "neighborhood and
21 regional characteristics," the county did make additional
22 findings which relate to this criteria (see Sunnyside
23 Neighborhood v. Clackamas Co. Comm., 280 Or 3, 569 P2d 1063
24 (1977), which indicates that there is no specific form required
25 for findings in land use cases). Those findings include the
26 following:

"The Subarea Plan recognized the need to develop
rural living opportunities to citizens of Lane County
and further set forth a policy that future rural
residential development should locate in rural service
centers. The Subarea Plan does designate the Pleasant
Hill area including the Property as the most suitable
location for future rural residential development in
the Subarea. As noted by the Applicant, there is a
shortage of suitable and available rural home sites
that are of this size and location.

1 "The most suitable area for this type of
2 development are those areas identified as rural
3 residential areas, located in the Pleasant Hill rural
4 service center and which are not suited for intensive
5 resource management. This property is ideal because
6 of the close proximity of community commercial
7 facilities directly north and across Highway 58.
8 These commercial facilities are within easy walking
9 distance of the Property. Furthermore, schools and a
10 fire station are located just east of this property,
11 again in close proximity. Few of the parcels in the
12 rural service center of Pleasant Hill are as
13 conveniently located as this parcel. Most
14 similarly-situated parcels are already developed. In
15 addition, no more access points have to be created
16 onto Highway 58 by development of this property.
17 Residential development of this property is not
18 visible from the highway and will not encourage the
19 proliferation of strip development along Highway 58.
20 Finally, the Property is in an area that is already
21 developed with rural residential uses.

22 ***

23 "This land has very limited agricultural
24 potential by reason of its size and location near
25 existing residential and commercial development. On
26 the other hand, it is an area that is designated for
27 future rural residential development and already
28 contains substantial amounts of rural residential
29 uses. From an energy standpoint, development of areas
30 around and in rural service centers makes far better
31 sense than to allow leapfrogging development away from
32 necessary commercial support facilities and schools.
33 In addition, more people will be provided an
34 opportunity to have a limited pasture and garden area
35 in a size which is both manageable and productive for
36 home consumption."

37 ***

38 "While some parcels much further south are in
39 limited agricultural use, the Property is within an
40 area that is already committed to residential and
41 commercial development. As noted previously, parcel
42 sizes in the area range from less than one acre to
43 approximately 12 acres and development of this
44 property into two-acre lots would be entirely
45 compatible with those parcel sizes and existing
46 uses." Findings, p. 10-11.

1 Natural Boundaries

2 Regarding natural boundaries, the RUPA I test, supra,
3 states:

4 "Findings regarding natural boundaries must
5 detail what the boundaries are and state precisely why
6 they irrevocably commit the land to nonfarm or
7 nonforest use." RUPA I, p. 16.

8 Lane County's findings regarding the natural boundaries that
9 affect this property are as follows:

10 "The size of parcels south of the property are
11 considerably larger and development would not likely
12 be permitted. Also, there is a stand of scrub oak and
13 vegetation that extends south from the property. A
14 creek is located just south of the Property and
15 separates it from other rural property." Findings, p.
16 10.

17 The record indicates that approximately 30-60 feet south of
18 the subject property is a year-around stream, which is up to 30
19 feet wide in the winter and varies in depth from a foot in the
20 summer to 10 feet in the winter. The stream is bordered by
21 scrub oak. While this stream is not a boundary to the extent
22 that a sheer cliff or a wide river would be, when considered
23 with the other characteristics already discussed, the county
24 could reasonably consider it to be a natural barrier of
25 sufficient magnitude to prevent further encroachment of
26 non-agricultural or forest uses onto the larger parcel holdings
27 to the south.

28 Other Factors

29 The majority opinion relies heavily on the gross income
30 (profit in money) test. I believe consideration of gross
31

1 income or profit in money belongs in this case, if at all, as
2 merely one of those items fitting within the "other factors"
3 portion of the commitment test. Use of gross income as a test
4 for determining if land is of agricultural quality is an
5 illogical standard for the following reasons.

6 (1) The act of determining gross income or profit in money
7 puts the local governing body, in its role as finder of fact,
8 in a position of having to audit the books of the
9 landowner/farmer. Such an imposition is unreasonable and fails
10 to recognize the resource and procedural limitations of local
11 governing bodies.

12 (2) The test fails to recognize the fact that (paraphrasing
13 the statement of a present member of the LCDC) if you put a
14 Class IV farmer on Class I soil the result is a Class IV farm.
15 In other words the income potential of a piece of farm land is
16 based on too many variables to be accurately evaluated by
17 looking at the books of previous or present farm operators.

18 (3) The reference to "profit in money" apparently was
19 incorporated into ORS 215.203(2)(a) for tax relief purposes and
20 not as a means of determining whether any particular parcel of
21 land is agricultural property. In 1000 Friends of Oregon v
22 Benton County, 32 Or App 413, 575 P2d 651 (1978), rev den by
23 opinion, 284 Or 41, the Court of Appeals stated that the
24 portion of ORS 215.203(2)(a) within which the phrase "profit in
25 money" appears is part of a legislative program to provide tax
26 relief for certain farm lands. See Stringer v Polk County, _____

1 Or LUBA ____ 1981 (LUBA No. 81-068), Footnote 6.

2 (4) The gross income/profit in money test does nothing to
3 further the goal of preserving agriculture and forest lands for
4 the future. Gross income or profit in money only recognizes
5 present consumption patterns of agricultural products and state
6 of the art technology. It can not be used to predict changing
7 farming techniques and demand for heretofore unknown or
8 rejected crops. A good example of the misplaced emphasis on
9 gross income or profit in money in determining the future worth
10 of a resource is found by looking at the fishing industry. Not
11 too very long ago bottom fish such as hake and brown rock fish
12 were not profitable to harvest. With the advent of improved
13 technology in harvesting and marketing techniques and a change
14 in consumer desires, however, those species are now being
15 caught and sold in great quantities. Who is to say that
16 because no crop of value can be produced on certain land in
17 1981, that by the year 2000 the same will hold true. While one
18 might point to this argument as being a good reason to preserve
19 all, even marginal soil class land, such an argument ignores
20 other valid non-agriculture demands for land. The point is
21 that gross income or profit in money considerations are
22 irrelevant in deciding whether property is "committed" to
23 non-agricultural use. My 60' x 50' backyard, if used to grow
24 certain high demand crops, could produce gross income/profit in
25 money. That does not change the fact that my backyard is
26 located in an R-7 (7,000 square foot lots) zone surrounded by

1 residences.

2 COMPELLING REASONS

3 What the county findings and my review of the record
4 indicate is that no single characteristic of this property
5 will, standing by itself, support a justification of commitment
6 to non-resource use. However, as can be seen by reading the
7 county's findings, when taken in combination, I can understand
8 why the county believed that the subject property fits closer
9 to the committed than to the non-committed side of the
10 "committed-noncommitted spectrum." Woven into the findings are
11 sufficient factors to show why the county believes commitment
12 exists and to show that the county considered the necessary
13 factors for application of the committed lands test. I cannot
14 say, in viewing the findings and facts as a whole, that a
15 reasonable person could not be compelled to conclude, as did
16 the county, that the land is likely committed to non-resource
17 use. Contrary to the majority opinion on this issue, in
18 reading the county's finding I can understand why the county
19 concluded that commitment exists. I believe that in gray areas
20 such as this the county's determination must control.

21 GOALS 6 and 10

22 Because the majority in its opinion does not conclude that
23 commitment exists it finds it unnecessary to address
24 petitioners' fourth assignment of error. Since I believe the
25 county's determination that commitment exists controls in this
26 fact situation, I believe it necessary to address petitioners'

1 fourth assignment. Petitioners in their fourth assignment of
2 error allege:

3 "The board's order and findings fail to comply
4 with Goals 6 and 10 in that insufficient findings and
5 findings not supported by the record are made by the
6 board on these goals."

7 Statewide Goal 6 states in part:

8 "****All waste and process discharges from future
9 development, when combined with such discharges with
10 existing developes shall not threaten to violate or
11 violate applicable state or federal environmental
12 quality statutes, rules and standards."

13 Regarding Goal 6 petitioners argue that there is evidence
14 in the record indicating that the subject property may contain
15 "severe" and "moderately severe" soil with "development
16 suitability ratings of III and IV" (pointing to the lower
17 Middle Fork Subarea Plan). In further reference to the
18 applicable subarea plan, petitioners point out that land with
19 development capabilities of III should be developed only after
20 careful study, and those with development capability rating IV
21 should normally not be developed. Petitioners assert that in
22 spite of this information, no particular inquiry was made by
23 the county and no specific findings adopted establishing that
24 there is not a threat of violation of environmental quality
25 statutes or standards. Petitioners are specifically concerned
26 about sewage and drainage problems that may be created by
development of the property, especially impacting the land to
the south of the subject property because the property slopes
towards the south.

1 The county in its brief recognizes petitioners' concern but
2 points out that no development proposals have been received by
3 the county. The county also points out that it believes it to
4 be poor policy to engage in careful studies prior to receiving
5 actual development proposals and hence, has not conducted such
6 studies. It points out that it is aware of the concern to the
7 area residents and the use to which the soil and water in the
8 area are put. It argues that it will conduct the necessary
9 studies in the event a proposal for development is received and
10 will determine whether such development may be allowed,
11 consistent with good resource management practices. As it
12 stated in its finding regarding Goal 6:

13 "All applicable federal, state and Lane County
14 air, water and land quality rules and regulations will
15 be followed during the development of this property."

16 In addition, under Goal 11, the county in its findings states:

17 "If the land is not capable of supporting the
18 maximum number of lots allowed by this zoning then
19 obviously a smaller number will be developed."

20 On page 14 of the findings, the county responds to the
21 petitioners' concerns that the soils on the property will
22 restrict rural residential development. The county says:

23 "While the soils may restrict individual lot
24 development this type of site specific analysis is
25 more appropriate and will be conducted during a review
26 of an actual subdivision application. If the property
is not capable of being divided into two acre lots by
reason of soil restrictions and constraints, then a
tentative plat of such division will not be approved.
See Lane Code, Chapter 13, Land Divisions."

As can be seen by the county's determination the opponents

1 to this development have had their chance to make known their
2 concerns. The county has listened to their concerns and has
3 agreed that if their concerns are valid then the development on
4 the property will not be allowed to go through. The county has
5 done all it is required to do under Goal 6. It has responded
6 to citizen input and set up safeguards to respond to the
7 citizens' concerns. Therefore, Goal 6 has been complied with.

8 Petitioners next alleged that Goal 10 has been violated.
9 The thrust of petitioners' argument regarding Goal 10 is that
10 Goal 10 mandates that housing be provided within the urban
11 growth boundary. No where in Goal 10 is there a requirement
12 that all housing be provided within an urban growth boundary.
13 Goal 10 states:

14 "To provide for the housing needs of the citizens
15 of the state.

16 "Buildable lands for residential use shall be
17 inventoried and plans shall encourage the availability
18 of adequate numbers of housing units at price ranges
19 and rent levels which are commensurate with the
20 financial capabilities of Oregon households and allow
21 for flexibility of housing location, type and density.

22 "Buildable Lands - refers to lands in urban and
23 urbanizable areas that are suitable, available and
24 necessary for residential use.

25 "Household - refers to one or more persons
26 occupying a single housing unit."

While the definition of buildable lands uses the terms
urban and urbanizable area, all Goal 10 requires is that
buildable lands be inventoried. It does not require that all
housing must be placed within an urban growth boundary. The

1 Land Conservation and Development Commission has never
2 interpreted Goal 10 to require all housing built in the future
3 be located within an urban growth boundary. Such an
4 interpretation would render the definition of rural land found
5 in the goals to be nullity and would incorporate an
6 inconsistency in the land use planning system set up by the
7 statewide goals. LCDC defines rural land in its statewide
8 goals as follows:

9 "Rural lands are those which are outside the
10 urban growth boundary and are: (a) non urban
11 agricultural forest or open space or be other lands
12 suitable for sparse settlement, small farms, or
acreage homesites with no or hardly any public
services, and which are not suitable, necessary or
intended for urban use."

13 There is substantial evidence in the record to support the
14 county's findings regarding Goal 10. I would affirm in total
15 the Lane County decision in this case.

FOOTNOTE

1
2
3 1

4 The county's summary of its findings quoted supra at pp.
5 5-7 indicates the county's determination of commitment was
6 based upon "existing development, present zoning and the
7 comprehensive plan for the area."

8 Concerning the county's reliance on plan and zoning
9 designations, unacknowledged comprehensive plan and zoning
10 designations cannot under LCDC's commitment test be used to
11 support a conclusion of commitment to non-resource use. In
12 RUPA I one of the ten factors relied upon by the county to
13 support its determination of commitment was "plan designation
14 and zoning of adjacent properties." We said concerning this
15 factor:

16 "As regards Item No. 9, plan and zone
17 designations on adjacent properties which have not
18 developed into actual use while relevant are not
19 material factors supporting a conclusion of present
20 irrevocable commitment." RUPA I, Slip Op at 17.

21
22 2

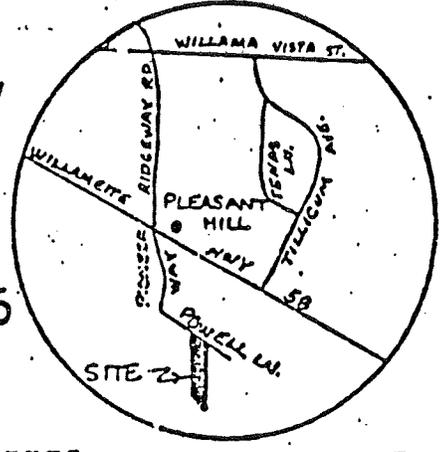
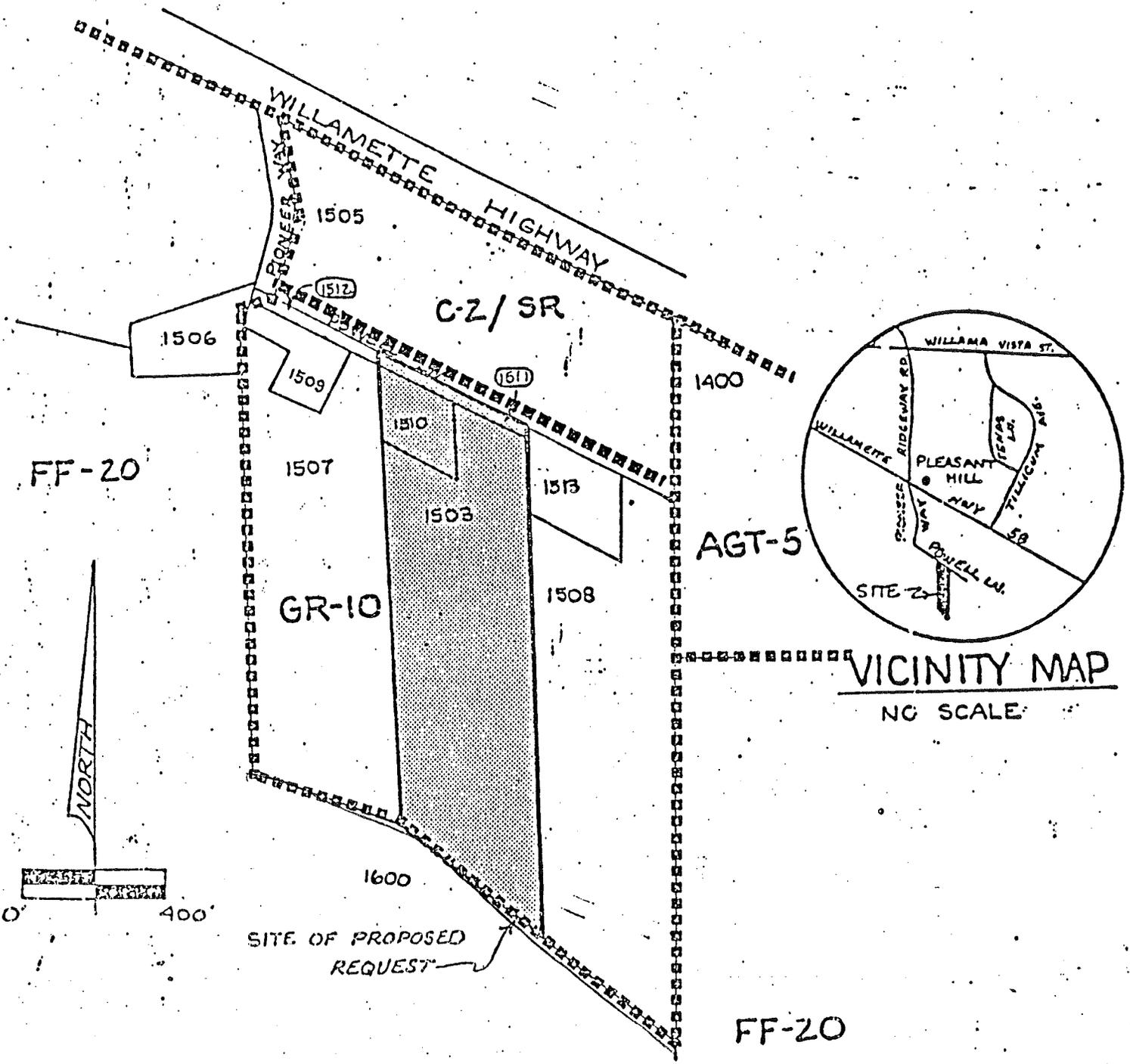
23 The Board's proposed opinion also discussed, based upon the
24 holding in the Douglas County case, the necessity for the
25 county's findings to show that a reasonable and prudent farmer
26 could not produce a gross income by putting the property to
27 some resource use. In its determination, however, LCDC said
28 the following concerning the use of the gross income approach
29 in determining resource lands are committed to non-resource use:

30 "Actual or potential production of gross income
31 is not an essential element of the definition of
32 agricultural lands which meet the soil classification
33 definitions of the Goal (Goal 3), nor is a finding
34 that land cannot produce any gross income essential to
35 a finding that land is irrevocably committed to
36 non-resource use. Land is agricultural and Goal 3
37 applies if it meets the definition of Goal 3. The
38 inability of land to produce gross income is a factor,
39 but only one of the factors, in a finding that
40 agricultural land is irrevocably committed to
41 non-resource use."

AREA MAP

DORMAN

ZC80-254



VICINITY MAP
NO SCALE

BEFORE THE BOARD OF COMMISSIONERS
FOR LANE COUNTY

In the Matter of a Zone Change Application)	ZC 80-254
BRUCE DORMAN,)	FINDINGS OF FACT
)	AND
Applicant.)	<u>CONCLUSIONS OF LAW</u>

Bruce Dorman (the "Applicant") is the owner of real property located just south of Highway 58 in Pleasant Hill on Powell Lane, which property is more particularly described as Tax Lot 1503 and 1511, Lane County Assessor's Map No. 18-02-33 (the "Property"). See the Map attached hereto and by this reference incorporated herein. The Applicant submitted an application for zone change to the Lane County Planning Department ("Planning Department") requesting a change of zone from General Rural-10 (GR-10) to Rural Residential-2 (RR-2). A public hearing was held before the Lane County Planning Commission ("LCPC") on September 16, 1980. The Applicant and his attorney appeared and testified in favor of the application. JoAnn Coleman and James Laird appeared and testified in opposition. The public hearing was closed and after deliberation, the LCPC voted unanimously to approve the application. Written findings in support of that approval were signed and entered in the record on September 30, 1980.

An appeal of the LCPC approval was filed by the attorney for Mr. and Mrs. Nate Coleman on October 7, 1980, to the Lane

County Board of Commissioners ("the Board of Commissioners"). A public hearing to review the appeal was held before the Board of Commissioners on December 3, 1980. The Applicant and his attorney again appeared and testified in favor of the application. The attorney for the Colemans, JoAnn Coleman and James Laird appeared and testified in opposition. Rebuttal testimony was then made by the Applicant's attorney. The public hearing was closed and after deliberation the Commissioners voted (3-2) to affirm the LCPC's approval of the zone change application and to dismiss the appeal.

NOW, THEREFORE, in support of and as a basis for the rezoning of the Property owned by Bruce Dorman and described herein, the Lane County Board of Commissioners, on the basis of the record before them, hereby make the following findings of fact:

1. The Property contains approximately 12 acres and is located on Powell Lane in the rural service center of Pleasant Hill just south of Highway 58. On the Property is located a mobile home and two sheds.

2. The existing GR-10 zoning for the Property was adopted sometime after 1975. The Property is located in the Lower Middle Fork Subarea and designated in the comprehensive plan for that Subarea ("Subarea Plan") as suitable for "Rural Residential" development.

3. The Property is bounded on the north by property

zoned Neighborhood Commercial, C-2, SR, (Tax Lot 1505 on the attached map), on the northeast by property zoned Agriculture, Grazing and Timber-5 (AGT-5), and by property zoned Farm-Forestry-20 (FF-20) to the south, southeast and west. Directly across Highway 58 from the parcel zoned C-2, SR, there is a larger area zoned commercially which presently includes a bank, drugstore, and grocery store. The parcel immediately north and adjacent to the Property (Tax Lot 1505 on the attached map) has been subdivided for future commercial development, a preliminary road has been constructed running east and west through the property and a Dairy Queen restaurant is presently under construction on that property. On the plan diagram of the Subarea Plan, the area located directly across Highway 58 is designated as a Community Commercial Center.

4. The Property contains Class II, III and IV wet soils. The Property slopes down towards the southern boundary and is covered by grasses. A creek is located just beyond the southern boundary of the Property. The Property is not visible from Highway 58.

5. The Property is in the Pleasant Hill Rural Fire District and Pleasant Hill School District #1. The fire station and schools are located just east of the Property on Highway 58. Pacific Power and Electric provides electrical service and the Lane County Sheriff's office provides police service.

6. Lane Code § 10.315-20 sets forth the criteria for rezonings as follows:

"Zonings, rezonings and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone district classification proposed, applicable Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Order of the Board of County Commissioners or the Planning Commission in accordance with the procedures in this section."

The specific purpose of the Rural Residential zoning district is stated in Lane Code § 10.130-05 and provides:

"The Rural Residential District is intended to provide opportunities for persons who desire to live in a rural neighborhood setting. This district may be applied to rural communities, rural service centers, minor or major development centers and other rural neighborhoods in the more isolated portions of Lane County, as more specifically provided in LC 10.130-42 below."

7. The Subarea Plan designates the Property as "Rural Residential" which land-use category is described in the Subarea Plan as follows:

"The Rural Residential category is applied to those areas within the Lower Middle Fork Subarea which presently have or are likely to have a 'community development center' character and generally moderate development constraints-- Pleasant Hill, Jasper and Trent."

The Intent and Purpose of the "Rural Residential" land-use category is described in the plan matrix as follows:

"Provide opportunities for living in rural residential or rural neighborhood settings; (1) located within or adjacent to communities designated or with the character of rural service centers, minor or major development centers. Can accommodate some expansion due to close proximity to necessary public facilities and services, and if located in an area with moderate development constraints; (2) Rural neighborhoods located in more isolated portions of the County or existing rural neighborhoods which generally have severe development constraints. Some infilling may be appropriate in existing areas not otherwise appropriate for expansion."

"Rural Service Centers" are described on Page 6 of the Subarea Plan as follows:

"With few exceptions, local employment possibilities are limited in these communities and there is a minimum of investment in public facilities to serve increased population. The designation of rural 'service center' would allow for the provision of limited services, particularly commercial services, to serve the local population. Some infilling of development on lots of one acre or more may be possible in some communities if subsurface sewage disposal can be accommodated. However, the creation of small lots and acreages around these communities should be discouraged."

Finally, the matrix for the Subarea Plan contains the following Key Designation Factors for the Rural Residential land-use category which are intended to guide and control development within that land-use category:

- (a) "Soils--Development Suitability Rating of 1, 2 or 3."
- (b) "Slope--Generally less than 15%. Development on slopes in excess of 15% should be carefully analyzed to ensure that there is minimal environmental risk and/or public and private costs."
- (c) "Flood Hazard Consideration--Completely out of flood hazard areas."
- (d) "Water Supply--Generally good ground water supplies. Development proposal must demonstrate that additional development will not deplete the water supplies for existing uses; will not preempt establishing other primary designated land uses in the future, or exceed the capacity to provide adequate water to the proposed development."
- (e) "Minimum Parcel Size--In or adjacent to a rural service, minor or major development center with moderate development constraints, parcel sizes must be a minimum of 2 acres. May be reduced to 1 acre with an acceptable community water supply system and if not detrimental to the natural environment or significant burden on other community facilities. In the more isolated portions of the County, parcel sizes must be a minimum of 5 acres."

- (f) "Other Development Standards--Development should preferably be located within a fire district."

8. The staff of the Lane County Planning Division found the proposed change of zone to Rural Residential-2 (RR-2) to be in conformity with the Subarea Plan's "Rural Residential" designation of the Property. The Property is located immediately adjacent to a community commercial center that has existing commercial facilities and is planned as a location for future, additional commercial facilities. The RR-2 zoning district (§ 10.130-42(1)(b)) requires minimum parcel sizes of two (2) acres in rural service centers where urban development is not planned. The Subarea Plan authorizes minimum parcel sizes of two (2) acres in Rural Residential areas that are "in or adjacent to" a rural service center. A major recommendation of the Subarea Plan requires rural residential development to be concentrated in existing residential "nodes." Subarea Plan, p.24. South of Highway 58 and on either side of the Property and within the immediate neighborhood, there are eleven (11) residences and a commercial subdivision. Directly across Highway 58, there are smaller residential lots and substantially more residential development plus the existing commercial facilities.

9. None of the opponents to this rezoning cited anything in the Subarea Plan or any other factual information that demonstrates this change of zone conflicts or is contrary with the Subarea Plan. The attorney for the Colemans quoted the provisions of the Subarea Plan found on Page 6 and cited in Finding 7

above regarding discouragement of small lots. However, it was noted in rebuttal that this provision applies specifically to areas "around" rural service centers and not to properties directly in such centers.

10. All of the Key Designation Factors have been addressed and satisfied by the Applicant for this zone change or they do not apply. The Property has a Development Suitability Rating of 3. Map 3, Subarea Plan. The slopes on the Property are not a problem for development into 2-acre lots. The Property is not in any flood hazard area. Well logs indicate a good water supply for the area. The Property is in the Pleasant Hill rural service center and immediately adjacent to planned and existing community commercial facilities.

11. The "Purpose" of the Rural Residential zoning district will be achieved by rezoning the Property to RR-2 by reason of its location in the Pleasant Hill rural service center.

12. The requested RR-2 zoning district conforms to the Subarea Plan diagram designation for the Property and all of the detailed standards and criteria in that Plan which describe development in the Rural Residential land-use category.

13. Prior to acknowledgement, this zone change has to be evaluated with regard to all relevant Statewide Planning Goals. The following findings and ultimate findings address and consider all applicable Statewide Planning Goals:

Goal 1, Citizen Involvement--Applicable Lane County procedures were followed, public hearings were held before

the LCPC and Board of Commissioners after notice was given and all interested parties were provided an opportunity to appear and present testimony.

Goal 2, Land Use Planning--As stated in previous findings, this zone change request is in conformity with the Rural Residential Plan designation for the Property as contained in the Lower Middle Fork Subarea Plan. An Exception may be required as noted under the Goal 3 discussion.

Goal 3, Agricultural Lands--The Property consists of Class II, III and IV soils and is presently used as a small garden and pasture. The rear third of the Property is covered with scrub oak and has Class IV wet soils. The staff report states that because of these soils an Exception to this goal is required. Applicant has submitted testimony and evidence in support of a finding that the Property is located in an area that is both physically developed and irrevocably committed to non-farm and non-forest uses. LCDC has issued a "position paper" entitled "COMMON QUESTIONS CONCERNING THE EXCEPTIONS PROCESS AS IT RELATES TO LAND USE DECISIONS PRIOR TO AN ACKNOWLEDGED COMPREHENSIVE PLAN" wherein LCDC states that an Exception to Goals 3, Agricultural Lands, and 4, Forest Lands, is not required if findings can be made that the land is:

- "(a) physically developed or built upon, or
- "(b) irrevocably committed to non-farm or non-forest uses in urban or rural areas."

The "position paper" then sets forth the following land-use characteristics that must be considered in order to establish that either one of the "built or committed" findings stated above has been supported:

- "(a) adjacent uses;
- "(b) public services;
- "(c) parcel size and ownership patterns;
- "(d) neighborhood and regional characteristics; and
- "(e) natural boundaries."

Although this "position paper" is not an official or binding agency rule, it does provide guidance in how to address and consider Goals 3 and 4.

- (a) Adjacent uses--There are eleven residences in the

immediate vicinity of the Property and rural subdivisions located directly across Highway 58. Small parcels with residences also are located east of the Property and south of Highway 58 near the school and fire station. Directly north and adjacent to the Property is a parcel (Tax Lot 1505 on attached map) containing 12-1/2 acres and zoned C-2, SR, Neighborhood Commercial. It was recently approved for a commercial subdivision in July. Only the larger parcels located south are used for agricultural purposes and even then primarily for grazing and pasture. Immediately south of the Property is a large area of trees, including scrub oak that prevents any type of agricultural use. The general character of the area which includes the Property is rural residential with supporting commercial and public facilities. Finally, the RR-2 zoning will serve to buffer the more intensive commercial uses from the FF-20 zoning south of the Property.

- (b) Public services--The subject property can be served with electricity by Pacific Power & Light and telephone service by Pacific Northwest Bell. The Property is in the Pleasant Hill School District and the Pleasant Hill Fire District. Neither district has expressed any concern with this zoning request. Police protection is provided by the Lane County Sheriff's Department. Lots created by this zone change will be served by individual septic tanks and wells. All necessary public facilities and services are presently provided to the property and creation of five additional lots will not affect the provision of those services or require additional public facilities and services to be extended to the area. The opponents noted the lack of sewers and a community water supply. However, there is no requirement that these facilities be provided and in fact the Subarea Plan notes that two-acre lots are appropriate without provision of these services.
- (c) Parcel size--Tax Lot 1510 is one acre in size and parcels generally range in size from one-quarter of an acre to twelve acres in the immediate vicinity of the Property. Across Highway 58, lots are quite small and resemble an urban subdivision. Also, a commercial subdivision has been approved on the property (12-1/2 acres) directly north of the Property which will result in intensive commercial development.
- (d) Neighborhood and regional characteristics--The general area on both sides of Highway 58 is rural residential with some community commercial develop-

ment existing and planned. Further south the uses are more rural but the plan does not provide for continued residential development south of the subject property. That property located south of the Property is designated Rural, Woodland and Grazing in the Subarea Plan and 20-acre parcel minimums are recommended. The Subarea is generally rural, although the Pleasant Hill area is identified as a rural service center wherein future development is most appropriate.

- (e) Natural boundaries--The size of parcels south of the Property are considerably larger and development would not likely be permitted. Also, there is a stand of scrub oak and vegetation that extends south from the property. A creek is located just south of the Property and separates it from other rural property.

In general, the area which includes the Property is committed to rural residential uses by reason of existing development, present zoning and the comprehensive plan for the area. Also, the Property already has a residence and two sheds located thereon and therefore is partially built upon.

If, however, it is not found that the Property is "irrevocably committed to non-farm uses," an Exception is supported by consideration of the following factors listed in Goal 2.

- (1) "Why these other uses should be provided for"

The Subarea Plan recognized the need to provide rural living opportunities to citizens of Lane County and further set forth a policy that future rural residential development should locate in rural service centers. The Subarea Plan does designate the Pleasant Hill area including the Property as the most suitable location for future rural residential development in the Subarea. As noted by the Applicant, there is a shortage of suitable and available rural home sites that are of this size and location.

- (2) "What alternative locations within the area could be used for the proposed uses"

The most suitable area for this type of development are those areas identified as rural residential areas, located in the Pleasant Hill rural service center and which are not suited for intensive resource management. This property is ideal because of the

close proximity of community commercial facilities directly north and across Highway 58. These commercial facilities are within easy walking distance of the Property. Furthermore, schools and a fire station are located just east of this property, again in close proximity. Few of the parcels in the rural service center of Pleasant Hill are as conveniently located as this parcel. Most similarly-situated parcels are already developed. In addition, no more access points have to be created onto Highway 58 by development of this property. Residential development of this property is not visible from the highway and will not encourage the proliferation of strip development along Highway 58. Finally, the Property is in an area that is already developed with rural residential uses.

(3) "Long-term environmental, economic, social and energy consequences"

This land has very limited agricultural potential by reason of its size and location near existing residential and commercial development. On the other hand, it is in an area that is designated for future rural residential development and already contains substantial amounts of rural residential uses. From an energy standpoint, development of areas around and in rural service centers makes far better sense than to allow leapfrogging development away from necessary commercial support facilities and schools. In addition, more people will be provided an opportunity to have a limited pasture and garden area in a size which is both manageable and productive for home consumption.

(4) "Compatibility with adjacent uses"

While some parcels much further south are in limited agricultural use, the Property is within an area that is already committed to residential and commercial development. As noted previously, parcel sizes in the area range from less than one acre to approximately 12 acres and development of this property into two-acre lots would be entirely compatible with those parcel sizes and existing uses.

Agricultural use of this property is both contrary to the existing plan designation and not feasible by reason of existing development in the area and planned future development of the area. Finally, it should be noted that an exception was granted for a commercial subdivision of Tax Lot 1505 by the Lane County Board of Commissioners (Order

No. 80-7-16-14) on July 16, 1980. The terms of that Exception recognize the need for commercial facilities in this area and the commitment of the Subarea Plan to rural residential development in and around the Pleasant Hill rural service center. Those findings have been incorporated into the record of this proceeding by the LCPC.

Goal 4, Forest Lands--The Subject Property contains Class 3c Woodlands soils, and therefore Goal 4 applies. However, as stated in the discussion under Goal 3, the subject parcel can either be found to be irrevocably committed to non-forest uses or an Exception to this Goal is justified based upon the findings and information provided therein. That discussion is incorporated under this goal by reference hereto.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources--This area is planned for rural residential development and creation of six lots with homes will not destroy the rural character of this area. It is expected that limited agricultural use of this property will continue and there does not appear to be any conflict with Goal 5 as stated. Finally, no unique scenic, cultural or historic resources have been identified on this property that require preservation or special attention.

Goal 6, Air, Water and Land Resources Quality--All applicable federal, state and Lane County air, water and land quality rules and regulations will be followed during the development of this property.

Goal 7, Areas Subject to Natural Disasters and Hazards--No natural hazards have been identified for this property, and therefore, this Goal is not applicable.

Goal 8, Recreational Needs--Not applicable.

Goal 9, Economy of the State--Not applicable.

Goal 10, Housing--This will increase opportunities for persons to live in a rural residential setting and still be located near necessary commercial support facilities and schools. Such a proposal is in keeping with the general policies and recommendations of Lane County as contained in the Goals and Policies document and the Subarea Plan.

Goal 11, Public Facilities and Services--All necessary public facilities and services can be presently provided to this property and each lot created by reason of this zone change will be served by an individual well and septic system. If the land is not capable of supporting

the maximum number of lots allowed by this zoning, then obviously a smaller number will be developed.

Goal 12, Transportation--Although the State Highway Division has stated that access should be limited to the existing right-of-way, no additional problems with the creation of five new lots have been reported. It is noted that access over Powell Lane will have to be improved but that will be a condition for future development of the Property. Merely changing the zone will not affect or cause any transportation difficulties.

Goal 13, Energy Conservation--Location of rural residential uses in and around a rural service center with existing commercial support facilities will most likely conserve energy by permitting persons to shop for daily needs in and around their residence rather than traveling a great distance into Eugene or Springfield.

Goal 14, Urbanization--This property will continue as rural land because Pleasant Hill is not an incorporated city and therefore does not have an urban growth boundary. Development more intense than two-acre lots will not be permitted until some type of community water system is available. This type of rural residential development is in keeping with the general goals and policies of Lane County and the Subarea Plan for this area.

Goals 15-19--Not applicable.

This zone change is in conformity with all relevant Statewide Planning Goals and it can either be found that the property and area including the Property is irrevocably committed to non-farm and non-forest uses or that an Exception to these two goals is justified.

14. The opponents of this zone change, specifically, JoAnn Coleman, James Laird and the attorney for the Colemans, raised several points in opposition to the proposed zone change. Specifically, the attorney for the Colemans raised the following issues:

- (a) Sole reliance on the plan diagram of the Lower Middle Fork Subarea Plan is not proper and that other portions of that Plan have to be considered.

Comment: Many more provisions of the Subarea Plan are

relevant and do apply to this particular zone change request. Specifically, and as noted in previous findings, the description for the Rural Residential land-use category specifically permits a minimum lot size of two acres for parcels in and adjacent to rural service centers. Furthermore, growth is encouraged to occur in development and rural service centers like the Pleasant Hill area.

- (b) The soils on the Property will restrict rural residential development.

Comment: While the soils may restrict individual lot development, this type of site-specific analysis is more appropriate and will be conducted during review of an actual subdivision application. [If the Property is not capable of being divided into two-acre lots by reason of soil restrictions and constraints, then a tentative plat of such a subdivision would not be approved. See Lane Code, Ch 13, "Land Divisions."]

- (c) It is not possible to take a Goal Exception to any particular Statewide Planning Goal since an Exception has not been taken in the comprehensive plan pursuant to the Wright decision made by the Land Use Board of Appeals.

Comment: Although the Wright case would arguably suggest this conclusion, that holding has not been tested in the Court of Appeals or any other court. Furthermore, since the Lower Middle Fork Subarea Plan was adopted on November 27, 1974, there was no requirement at that time that Exceptions be taken to Goals 3 and 4 whenever non-resource land-use designations were applied to lands that contained resource potential. Finally, an alternative finding has been made that addresses and considers the "built or committed" test.

(d) The "committed lands" test set forth in LCDC's policy paper on Exceptions has not be satisfied.

Comment: The Coleman's attorney presented testimony regarding adjacent uses, provision of public services and facilities, parcel size and ownership patterns in the vicinity of the Property, neighborhood and regional characteristics and natural boundaries. That testimony was considered and weighed against the testimony and evidence presented by the Applicant and the planning staff. Although there is room for dispute as to any one of the criteria set forth in the Exceptions paper as applied to this zone change, we believe a comparative balancing of the opponents' testimony versus that of the Applicant and his attorney, establishes that the area which includes the Property is "committed" to rural residential and community commercial uses. By reason of the existing commercial development presently adjacent to or near the Property and the proposed development which will be located directly adjacent to the Property, we believe the area which includes the Property is irrevocably committed to non-farm and non-forest uses. This is not to say that other areas, more rural in character and located south of the Property are similarly situated. In fact, rezoning of this property will buffer the more intense commercial activities from the rural lands located south and across the creek located just beyond the southern boundary of the Property. Additional public services and facilities will not be required for development of this property in two-acre lots and any further or more intensive division of this property

would not be permitted until more urban facilities and services, primarily sewer and water, are provided to this area. Finally, it is true that parcel sizes south, southwest and southeast of the Property are considerably larger than the Subject Property. However, parcel sizes directly adjacent to and across Highway 58 from the Subject Property are even smaller than two acres. Therefore, given the existing level of development and the location of this property, the RR-2 zoning district will provide a level of development that is appropriate, given the location of this property with regard to more rural and more urban properties on either side.

Both JoAnn Coleman and James Laird discussed the agricultural potential of the area which includes this property. While this potential does exist on larger parcels, it is also true, as noted by the Applicant, that smaller parcels of two to five acres does permit more intensive development and also agricultural use in the form of limited grazing and small garden plots. The opponents' property, on the other hand, is much larger than the subject property and is capable of more intensive agricultural management by reason of this larger size. Again, given the size and location of the subject property with respect to rural lands to the south and commercial lands to the north, the RR-2 zoning seems most appropriate for this property given those site characteristics. It should be emphasized that the justification for rezoning this property will not extend to all properties in the Pleasant Hill rural

service center nor will it apply to those properties adjacent to or outside of that rural service center.

Based upon the findings cited herein, the Board of Commissioners hereby enters the following conclusions of law:

A. The proposed zone change from GR-10 to RR-2 is not contrary to the public interest and is consistent with the specific purposes of the Rural Residential-2 (RR-2) zoning district.

B. The proposed rezoning to RR-2 conforms to and is consistent with the Lower Middle Fork Subarea Plan and specifically the Rural Residential designation for the Property contained in the plan diagram of that plan.

C. The proposed zone change to RR-2 is consistent with all applicable Statewide Planning Goals, including Goals 2, 3 and 4. The Property is in an area that is irrevocably committed to non-farm and non-forest uses. Further, the Property is already partially built upon with a residence and two sheds.

D. All other Lane Code criteria for zone changes have been satisfied.



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 11/24/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: COLEMAN v LANE COUNTY
LUBA No. 81-005

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

This case involves Lane County's decision to rezone a 12 acre parcel for two acre minimum lots sizes. The property is located near Pleasant Hill which is designated in Lane County's Subarea Plan as a rural center. The issue addressed by the Board was whether this property, consisting of agricultural and forest lands, was committed to non-resource use under the commitment test as first fully set forth in RUPA I. A majority of the Board, with referee Cox dissenting, concluded that while the county had addressed the requisite criteria, it did not explain adequately why the facts which it found led the county to conclude that the property could no longer be put to any resource use. The facts show that the property was bounded only on one side by developed properties and on three sides by undeveloped properties. The county found that the soils on the property were suitable for growing crops and for orchard production to name but two potential resource uses. However, the county did not address why, given actual physical development on only one side of the property, these resources uses were no longer possible.

Referee Cox, in his dissent, indicates the facts show intense commercial development to the north of the subject property, a natural boundary to the south, and uses to the east and west similar to those proposed on the subject property. Cox finds Lane County properly applied the committed lands test and that a reading of the county's findings as a whole explains why the county concluded that commitment exists. He finds that the decision comes down to a judgment call and therefore the county's determination must be followed.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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