BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FRIENDS OF DOUGLAS COUNTY
and SHELLEY WETHERELL,
Petitioners,

vs.

DOUGLAS COUNTY,
Respondent,

and

RANDY WALKER and DANNETTE WALKER,
Intervenors-Respondent.

LUBA No. 2003-210

FINAL OPINION
AND ORDER

Appeal from Douglas County.

James D. Brown, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Cascade Resources Advocacy Group.

No appearance by Douglas County.

Stephen Mountainspring, Roseburg, filed the response brief and argued on behalf of intervenors-respondent. With him on the brief was Dole, Coalwell, Clark, Mountainspring, Mornarich and Aitken, PC.

BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member, participated in the decision.

REMANDED 04/28/2004

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal a county ordinance adopting comprehensive plan and zoning map amendments and approving an irrevocably committed exception to statewide planning goals to allow for rural residential development on a 26.30-acre parcel.

MOTION TO INTERVENE

Randy Walker and Dannette Walker (intervenors), the applicants below, move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The subject property is a rectangular 26.3-acre parcel, with a long east-west axis. The property is developed with a single-family dwelling and related improvements on the eastern third of the parcel, where it borders a county road. Topographically, the property is on a south-facing slope, with a seasonal drainage running north-south in the eastern third of the property, and a steep rise in the western portion of the parcel with 30 to 60 percent slopes, where a power line crosses the property from north to south. The power line and associated 125-foot wide easement occupy 17 percent of the subject property. The terms of the easement preclude intervenors from using the servient land for forest purposes, although agricultural uses are allowed.

Most of the subject property is covered with a dense stand of oak-madrone, with a five percent mix of conifers. The subject property is designated Farm Forest Transitional and zoned Agriculture and Woodlot (AW). However, the subject property is not currently in farm or forest resource use, and there has been no forest management activity on the property for at least 40 years.

The county's comprehensive plan identifies a site index of 80 as the threshold of lands suitable for commercial forest uses. The eastern 15 acres of the property consists of Class III agricultural soil, with a forest site index of 80. A steep seven-acre portion in the western third of the property consists of Class VI agricultural soils with a forest site index of 113. Approximately four

level acres at the western end of the property is Class II agricultural soil, with a forest site index of 113.

The subject property is situated in a transitional zone on the western edge of a large area devoted to rural residential uses, known as Callahan PAC Committed Lands Site No. 6 (Site No. 6). Site No. 6 is an area of approximately 2,592 acres subdivided in the 1960s and 1970s, prior to adoption of the statewide planning goals. Generally, lands to the west, northwest and southwest are zoned and used for farm and forest uses. Lands to the immediate north, northeast, east, and southeast of the subject property are part of Site No. 6 and are generally developed with rural residential uses. Adjacent to the subject property on the north are eight parcels developed for rural residential use, with parcel sizes ranging from less than one acre to eight acres. Across the county road to the east there are several parcels zoned and developed with rural residences, with parcels ranging in size from five acres to 13 acres. The adjacent parcel to the south of the subject property is a 25-acre parcel, developed with a single dwelling, that was recently rezoned from AW to Rural Residential 5-acre (5R), after the county adopted a committed exception to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands). The area including the subject property is provided with community water, natural gas, power and telephone services.

Intervenors applied to the county to (1) amend the comprehensive plan designation of the subject property from Farm Forest Transitional to Committed Residential 5 acre, (2) amend the zoning classification from AW to 5R, and (3) adopt an irrevocably committed exception to Statewide Planning Goals 3 and 4, to facilitate division of the subject property into five residential lots. The county planning commission approved the application after a hearing. Petitioners appealed to the county board of commissioners, which considered the appeal based on the planning commission record. On December 10, 2003, the board of commissioners issued a decision denying the appeal, affirming the planning commission decision. This appeal followed.

INTRODUCTION

Under OAR 660-004-0028, an irrevocably committed exception to applicable statewide planning goals is warranted where, based on consideration of the factors enumerated in the rule, the local government concludes that uses allowed by the goals are impracticable in the exception area. OAR 660-004-0028(1).[1] Whether uses allowed by the goals are impracticable depends on the characteristics of the exception area, the adjacent lands, the relationship between the exception area and adjacent lands, and other relevant factors. OAR 660-004-0028(2).[2] While the local government's findings need not demonstrate that every use allowed by the goals is "impossible," the findings must demonstrate that farm uses allowed by ORS 215.203, propagation or harvesting of a forest product, and forest operations or forest practices are "impracticable." OAR 660-004-0028(3).[3] Finally, OAR 660-004-0028(6) sets forth a number of factors the local government must consider in taking an irrevocably committed exception.[4]

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[1] OAR 660-004-0028(1) provides, in relevant part:

> "A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable[.]"

[2] OAR 660-004-0028(2) provides:

> "Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:
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> "(a) The characteristics of the exception area;
>
> "(b) The characteristics of the adjacent lands;
>
> "(c) The relationship between the exception area and the lands adjacent to it; and
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> "(d) The other relevant factors set forth in OAR 660-004-0028(6)."

[3] OAR 660-004-0028(3) provides, in relevant part:

> "Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. * * * It shall not be required that local governments demonstrate that every use allowed by the applicable goal is 'impossible.' For

In evaluating the county's findings and ultimate conclusion under OAR 660-004-0028, we are bound by any finding of fact for which there is substantial evidence in the record. ORS 197.732(2)(6)(a). We must determine, based on a "clear statement of reasons," whether "the

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exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

"(a) Farm use as defined in ORS 215.203;

"(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

"(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a)."

[4] As relevant here, OAR 660-004-0028(6) provides:

"Findings of fact for a committed exception shall address the following factors:

"(a) Existing adjacent uses;

"(b) Existing public facilities and services (water and sewer lines, etc.);

"(c) Parcel size and ownership patterns of the exception area and adjacent lands:

"(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

"* * * * *

"(d) Neighborhood and regional characteristics;

"(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

"(f) Physical development according to OAR 660-004-0025; and

"(g) Other relevant factors."

local government's findings and reasons demonstrate" that the impracticability standard has been met. ORS 197.732(6)(b), (c). In making that determination, we are not required to give any deference to the county's explanation for why it believes the facts demonstrate compliance with the standards for an irrevocably committed exception. *Laurence v. Douglas County*, 33 Or LUBA 292, 297-99, *aff'd* 150 Or App 368, 944 P2d 1004 (1997).

As described in *1000 Friends of Oregon v. Columbia County*, 27 Or LUBA 474, 476 (1994), our "usual approach" in reviewing local government decisions under OAR 660-004-0028 is to (1) first resolve any contentions that the findings fail to address issues relevant under OAR 660-004-0028 or that the findings address issues not properly considered under that rule, (2) then resolve arguments that particular findings are not supported by substantial evidence in the record, and (3) finally, determine whether the findings that are relevant and supported by substantial evidence are sufficient to demonstrate compliance with the ultimate standard at ORS 197.732(1)(b) that uses allowed by the goals are impracticable. Petitioners' first three assignments of error correspond to the three steps of the approach described in *1000 Friends of Oregon v. Columbia County*. However, we find it unnecessary to address each of the parties' arguments under the first and second assignments of error. With exceptions discussed below, we assume that the county's findings of fact adequately address the proper considerations and are supported by substantial evidence, and devote most of our discussion to the parties' arguments under the third assignment of error. *Id.* at 476-477 (omitting the first two steps of our "usual approach," because even assuming that the challenged findings of fact address all relevant factors and are supported by substantial evidence the findings are insufficient to demonstrate that uses allowed by the goals are impracticable).

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

We resolve below one of the issues raised in the first and second assignments of error that seems critical to resolution of the third assignment of error, and do not address or resolve other issues raised under the first and second assignments of error. The issue we do address involves a

challenge to the findings and evidence regarding the capability of the subject property for resource use.

A. Resource Use of the Subject Parcel

Petitioners contend that the county's findings fail to adequately address the capability of the subject property for farm or forest uses. According to petitioners, the county's decision failed to address specific evidence submitted by petitioners regarding the capability of the subject property for resource use, and instead relied on intervenors' conclusory statements that no farm or forest uses of the subject property are practicable. [5]

Petitioners explain that they submitted evidence, including the testimony of three experts, that soils and other conditions on the subject property are suitable for (1) vineyards, (2) propagation of forest products, and (3) agricultural uses such as growing Christmas trees. With respect to vineyards, petitioners' evidence indicates that vineyards are planted on the same soils and slopes found on the subject property, with a nearby vineyard located on the same Class III agricultural soils that predominate on the subject property. With respect to forest uses, petitioners submitted the written testimony of a forester and a soil scientist, who both opined that the soils on the subject property are suitable for commercial forest uses. With respect to agricultural uses, petitioner Wetherell testified that she grows Christmas trees, grapes, pasture, and forest trees on the same soils that predominate on the subject property, and also noted the existence of a Christmas tree

[5] The county's findings address the capability of the subject property for farm or forest uses as follows:

> "The applicant has shown that use of the subject property for farm or forest activities is impracticable due to specific onsite conditions. [Petitioner] Wetherell testified that she believed the property to be suitable for both types of uses and introduced information related to the production capability of the soils on the property as set out on the NRCS soils interpretation sheets referenced above under Goals 3 and 4. Based on this information, Ms. Wetherell concluded that the property is suitable for the production of both farm and forest products. While in the broader context of the NRCS soils information the property might be suitable for farm or forest uses, suitability is not the standard for this amendment. It must only be demonstrated that uses allowed under the applicable goals are impracticable. The applicant provided testimony from an area agriculturist and a consulting forester concerning the practicability of farm and forest activities on this property. Both concluded that it is impracticable to conduct either farm or forest uses on the subject property due to a number of factors including soil conditions, topography and lack of irrigation." Record 35.

farm in the vicinity of the subject property. Petitioners also noted that the terms of the BPA easement allow agricultural uses, such as growing Christmas trees.

Intervenors critique the evidence submitted by petitioners, arguing that it fails to demonstrate that the cited farm and forest uses are in fact practicable, given the soils and characteristics of the subject property. Intervenors also argue that the county properly relied on the evidence submitted by intervenors that the subject property is not suitable for farm or forest use.

We agree with petitioners that the county's findings on this point are inadequate and not supported by substantial evidence. The county's findings do not address the evidence submitted by petitioners at all. While the county is not required to address every possible farm use defined under ORS 215.203(2)(a), when a party below identifies a particular farm use that may be practicable, the county must address that issue. *Friends of Linn County v. Linn County*, 38 Or LUBA 868, 888 (2000).

Intervenors' critique of petitioners' evidence may or may not be accurate, but nothing in the county's decision or the record cited to us explains why the subject property is not capable of supporting the cited farm and forest uses. The challenged decision relies heavily, if not exclusively, on the reported statements of an "area agriculturist" and a "consulting forester" to the effect that the subject property is not suitable for farm and forest uses. Record 35; *see* n 5. However, we are not cited to that testimony in the record, and apparently intervenors' consultants did not submit written testimony or otherwise appear before the county. Instead, intervenors cite us to the staff report at Record 153, which summarizes the consultants' views, apparently as reported by intervenors to staff. While statements in the staff report can constitute substantial evidence, and land use proceedings are not generally governed by rules of evidence, we believe that the probative value of second or third-hand expert testimony is simply too low to bear the weight of providing the principal support for the county's conclusions regarding the capacity of the subject property for farm and forest uses.

B. Irrevocably Committed

The county's ultimate conclusion under OAR 660-004-0028 that the subject property is irrevocably committed to nonresource uses relies on impacts from nearby rural residential uses, the level of public facilities available in the area, natural and man-made impediments to resource use, and the suitability of the subject property for resource use.[6] Petitioners argue that even assuming that most or all of the predicate findings of fact are adequate and supported by substantial evidence, the county's explanation based on those factual findings is insufficient to demonstrate that the subject property is irrevocably committed to nonresource uses.

1. Commercial Farm and Forest Uses

Petitioners first argue that the county appeared to have understood that the pertinent standard for impracticability was whether the subject property could support commercial-scale farm or forest operations. *See, e.g.*, Record 34 ("[R]esidential development in the area has resulted in a population density and residential lifestyle that are wholly incompatible with the kinds of land management activities that would otherwise be required for commercial farm and forest operations in rural Douglas County."). We agree with petitioners that the county erred in limiting its analysis to

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[6] The county's findings state, in relevant part:

> "Based on the facts and information contained in the record and the information set forth herein, the applicant has provided sufficient information to demonstrate that it is impracticable to utilize the subject property for farm or forest uses based on the facts set out above. The site is significantly impacted by the non-resource uses surrounding it as evidenced by the testimony and findings of the staff report (pages 37, 38 and 39) which we herein adopt by reference. There is an increased level of public facilities including public water which support existing and expanded rural residential development on the property and in the surrounding area. The regional and neighborhood characteristics of the Elgarose/Melrose area are largely rural residential in nature as evidenced by the fact that almost one-third of the rural residential lands in Douglas County are in this area. There are significant natural and man-made barriers that render impracticable the use of the property for resource purposes including steep slopes, an existing drainage, existing residential development, and a high voltage Bonneville Power Administration power line through the property. The applicant also provided testimony from an agriculturist and forestry consultant that the property is not suitable for either farm or forest uses due to onsite soil conditions, topography and lack of irrigation. Based on all the factors set out above the property is 'Irrevocably Committed' to non-resource uses." Record 42.

whether *commercial* farm and forest uses are practicable on the subject property. *Lovinger v. Lane County*, 36 Or LUBA 1, 17-18, *aff'd* 161 Or App 198, 984 P2d 958 (1999).

2. Impacts from Adjoining Rural Residential Uses

The "fundamental test" for a irrevocably committed exception is the relationship between the subject property and adjacent uses. *DLCD v. Curry County (Pigeon Point)*, 151 Or App 7, 11, 947 P2d 1123 (1997); OAR 660-004-0028(2). The county's analysis concludes that existing residential development on nearby committed lands creates "a number of inherent conflicts" with resource use of the subject property.[7] Record 34.

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[7] The county's findings with respect to the relationship between the subject property and adjacent lands state, in relevant part:

> "* * * Properties adjoining to the north, east and south are all designated and zoned to allow rural residential uses on parcels as small as five acres. There are 55 single-family dwellings within [one-quarter] mile of the subject property, most of which are on parcels that are under ten acres in size. With the exception of four dwellings lying to the west and northwest on somewhat larger parcels (4.60 to 26.30 acres) that are devoted to resource use, all of the other dwellings within a [half-mile] radius are devoted to non-resource residential use. In fact, all the other properties within the surrounding committed lands site, well beyond the [half-mile] radius, are designated and zoned for rural residential use, and nearly all area likewise developed with single-family dwellings.
>
> "The surrounding residential lands are representative of the predominate land use in the area. Consequently, residential development in the area has resulted in a population density and residential lifestyle that are wholly incompatible with the kinds of land management activities that would otherwise be required for commercial farm and forest operations in rural Douglas County.
>
> "There are a number of inherent conflicts that typically impact resource management activities as a result of the increase in surrounding rural residential uses. Rural residential development brings with it an increase in incidents of human trespass on adjacent resource lands with resultant impacts that include crop damage, agitated or injured livestock, and fence damage from repeated crossing or deliberate cutting of fence lines. There is also an increased level of domestic animal encroachment and damage associated with rural residential development. Dogs running and killing livestock result in significant costs to farmers due to livestock stress, injury and death, as well as increased veterinarian care and the need for increased security and supervision of livestock. * * * [T]he staff report sets out specific occurrences of vandalism, crime and domestic animal harassment of livestock related to the subject property and surrounding area. These facts are sufficient to demonstrate the impacts of such activity related to the subject property and support a determination that the property is 'Irrevocably Committed' to non-resource uses.
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> "The second component of the residential/resource conflict results from impacts of agricultural and forest management practices and potential damage on adjacent residential areas. Typically, agricultural management practices include activities that have undesirable impacts

Petitioners challenge the county's reliance on "inherent conflicts" between the resource use of the subject property and existing rural residential development from lands to the north, east and south of the subject property. According to petitioners, there is no evidence of any actual conflicts between rural residential uses and the subject property or any other resource use or resource-zoned property in the area. The only specific evidence of actual conflicts between residential uses and resource uses is in the staff report at Record 162-64, which describes seven incidents of dogs chasing livestock in 2002 and four more incidents in 2003 in a large but undefined area that includes the subject property. The staff report also describes various incidents of vandalism, noise, burglary, theft, weapons complaints and other disturbances in the same area that staff attributes to rural residential development. The staff report concludes that these incidents "demonstrate that residential uses which conflict with resource use impact the subject property." Record 164.

Petitioners argue that none of the cited incidents relate to the subject property or any particular resource-zoned property in the area and, in any case, such incidents are the kind of conflicts that the Court of Appeals has characterized as "make-weights." *Prentice v. LCDC*, 71 Or App 394, 403, 692 P2d 642 (1984) (absent examples of interference with farm or forest use from adjacent residential development, concerns regarding vandalism of farm equipment, harassment of livestock, pilferage of crops or complaints about herbicides and pesticide use are, at best, make-weight considerations). Further, petitioners contend that the other types of "inherent conflicts" cited by the county—dust, noise, spray, and smoke from resource operations affecting residential neighbors—are simply the normal consequences of rural life and are insufficient to justify an irrevocably committed exception. *Id.* (quoting *1000 Friends of Oregon v. LCDC*, 69 Or App

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on adjacent residential uses such as plowing and tilling of fields which generate a significant amount of dust that is incompatible with residential uses. Also, the drifting of spray resulting from the application of fertilizers, weed control chemicals and dormant sprays raises concerns about health issues and other environmental impacts that may be incompatible with adjacent residential uses. Forest management practices generate similar kinds of impacts on adjacent non-resource uses including aerial spraying, logging activities and prescribed burning." Record 34-35.

717, 728, 688 P2d 103 (1984) ("people who build houses in an agricultural area must expect some discomforts to accompany the perceived advantages of a rural location.").

We generally agree with petitioners that the county's findings fail to demonstrate that the relationship between the subject property and adjacent uses renders resource use of the subject property impracticable. An initial problem with the county's analysis is that it appears to rely heavily on alleged impacts from rural residential lands one-quarter mile or more distant from the subject property that by any stretch of the term are not "adjacent" to the subject property. While the county must evaluate "[n]eighborhood and regional characteristics," the focus of OAR 660-004-0028 is the relationship between the subject property and *adjacent* uses. OAR 660-004-0028(2). The county's findings devote almost all of its evaluation of "existing adjacent uses" to a general description of the surrounding properties up to one-half mile distant, and provide almost no description or analysis of *adjacent* uses or impacts of such adjacent uses on the subject property. Record 36.

The county's failure to focus on adjacent uses is significant because, as petitioners point out, the evidence regarding the first set of conflicts cited and relied upon (dogs harassing livestock/vandalism, etc.) appears to be drawn from a large but undefined area not limited to the immediate vicinity of the subject property. While the staff report speculates that there may be a large number of dogs on adjacent properties, and that the risk of such dogs running loose presents a threat to livestock grazing on the subject property, there is little if any evidence to support those speculations, or the staff conclusion that the risk of dog harassment is such that livestock grazing on the subject property is impracticable.

With respect to the reported incidents of vandalism, etc. in that large, undefined area, the county's decision does not attempt to relate the cited criminal acts to resource uses or any resource-zoned parcel in the area, much less to the subject property. For example, there is no indication that the five reported incidents of "vandalism/noise/nuisance" or the one reported incident of "weapons complaint" filed in 2002 had anything to do with resource-zoned parcels, and certainly

no indication that the cited incidents have interfered with farm or forest uses in the immediate vicinity of the subject property and, by extension, are likely to interfere with farm and forest use of the subject property. The county's extrapolation from the cited criminal incidents in that large, undefined area to the conclusion that adjacent rural residential uses render resource use of the subject property impracticable is simply too tenuous.

The other types of conflicts relied upon, the alleged "inherent conflicts" between rural residential use and resource use of the subject property from dust, spray, smoke, etc., are also nonspecific to the adjacent properties. More importantly, we agree with petitioners that short of evidence that conflicts arising from externalities of farm or forest operations have or are likely to cause actual interference with resource operations, any conflicts caused by such externalities are part of the expected consequences of rural life. Conflicts of the type and level described in the county's decision are indeed "inherent" in rural living in or near resource-zoned lands. Without evidence that externalities of resource operations are of the nature or level to cause actual or likely interference with continued resource uses, such conflicts with rural residential uses are insufficient to demonstrate that resource use is impracticable.

3. Existing Public Facilities and Services

The challenged decision also cites the existence of public roads, water, gas, power, telephone and fire protection services in the area including the subject property as "a significant factor leading to the subject 26.30-acre property being irrevocably committed to non-resource uses." Record 37. Petitioners contend, however, that the county's decision fails to explain why the existence of such public services in the area commits the subject property to nonresource use.

The county reasons that existing public facilities contribute to rendering resource use of the subject property impracticable, on two grounds: the existence of public facilities (1) has encouraged existing rural residential development on adjacent and nearby lands, and (2) will encourage future

rural residential division and development on larger properties within adjacent commitment sites.[8] In other words, the cited public facilities do not in themselves contribute to rendering resource use of the subject property impracticable; however, they have encouraged existing rural residential development and will encourage future rural residential development that has had or will have that result.

We agree with petitioners that the county's findings with respect to public facilities provide little if any support for the county's ultimate conclusion that resource use of the subject property is impracticable. The first basis, that public facilities have encouraged existing rural residential development, is derivative, dependent entirely on impacts that the county has already taken into consideration. The second basis, that public facilities will encourage *future* rural residential development, is both derivative and irrelevant to the impracticability analysis. The focus of analysis under OAR 660-004-0028 is on *existing* circumstances that contribute to the practicability of resource use in the exception area, not speculative future circumstances. *See* OAR 660-004-0028(6)(a)–(c) (the county must consider *existing* adjacent uses, *existing* public facilities, *existing* parcel sizes). Nothing in OAR 660-004-0028 suggests that the possibility of future land divisions or development is a legitimate consideration under the rule.

D. Conclusion

As explained above, the county's decision fails to demonstrate that the relationship between the subject property and adjacent lands renders resource use of the subject parcel impracticable.

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[8] The county's findings state, in relevant part:

> "The range of public facilities and services available in the area has contributed to the amount of rural residential development occurring on the adjoining and nearby committed lands. The availability and adjacency of these same public facilities and services is a major factor in committing the subject property to non-resource uses. It is reasonable, therefore, to conclude that the availability of these facilities and services will lead to further parcelization and more intensive development of the remaining larger properties in the adjacent committed site. The degree to which public facilities and services presently exist in the entire surrounding area is a significant factor leading to the subject 26.30-acre parcel being irrevocably committed to non-resource uses." Record 37.

The county's findings with respect to the suitability of the subject property for resource use fail to address issues raised by petitioners and rely on expert testimony that is not in the record. We understand the county's decision to misconstrue the appropriate standard in limiting its analysis to whether *commercial* farm and forest uses are practicable on the subject property. In addition, the county's principal basis for concluding that resource uses are impracticable rests on perceived conflicts with rural residential uses. However, the alleged conflicts involve rural residential uses over a large area and the county's findings fail to relate the alleged conflicts to adjacent uses or demonstrate that conflicts have or are likely to interfere with resource use of the subject property. Further, the type and level of conflicts the counties identifies are "make-weight" considerations, part of the expected consequences of rural life, that are insufficient to justify an irrevocably committed exception. Finally, the county's findings regarding the contribution of public facilities to commitment are erroneous and fail to support the county's ultimate conclusion that resource use of the subject property is impracticable. The county's remaining findings under OAR 660-004-0028, considered singly or cumulatively, are insufficient to justify a committed exception to goals 3 and 4.

The first and second assignments of error are sustained, in part. The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

Petitioners contend that the county erred in failing to address the requirements of OAR 660-004-0018(2)(b)(B), in zoning the subject property for rural residential uses.[9] In relevant part,

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[9] OAR 660-004-0018(2) governs planning and zoning for exception areas, and provides in relevant part:

> "For 'physically developed' and 'irrevocably committed' exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
>
> "(a) Which are the same as the existing land uses on the exception site; or
>
> "(b) Which meet the following requirements:
>
> "* * * * *

OAR 660-004-0018(2)(b)(B) requires that the county must adopt minimum lot sizes and other restrictions that ensure that "rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028[.]"

Petitioners note that active resource operations on resource-zoned parcels adjoin the subject property to the west and northwest, and argue that the findings and record fail to address the requirements of OAR 660-004-0018(2)(b)(B) or establish that zoning the subject property for rural residential uses will not commit adjacent and nearby resources lands to nonresource use.

Intervenors respond that, while petitioners cited both OAR 660-004-0018(2)(b)(B) and (C) during the proceedings below, petitioners' specific argument related to compliance with the "compatibility" requirement of OAR 660-004-0018(2)(b)(C) rather than the requirements of OAR 660-004-0018(2)(b)(B). According to intervenors, petitioners failed to adequately raise any issue under OAR 660-004-0018(2)(b)(B), and therefore the issue presented in this assignment of error is waived. ORS 197.763(1); 197.835(3). In any case, intervenors argue, even if the issue of compliance with OAR 660-004-0018(2)(b)(B) is not waived, the record includes evidence that "clearly supports" a finding of compliance with the rule. ORS 197.835(11)(b).[10]

Petitioners submitted written testimony to the planning commission arguing that:

> "Requirements to irrevocably committed exceptions to goals as stated in OAR 660-004-0018(2)(b)(B) and (C) are '[t]he rural uses, density, and public facilities and

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> "(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
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> "(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses."

[10] ORS 197.835(11)(b) provides:

> "Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action."

> services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and the rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses.' The applicant states the residential development in the area has resulted in a population density and residential lifestyle that are wholly incompatible with the kinds of land management activities that would otherwise be required for commercial farm and forest operations in rural Douglas County. If this concept were to be true, then rezoning of the Walker parcel would not be compatible with nearby resource uses." Record 111.

Petitioners also argued orally that irrevocably committed exceptions were limited to "rural uses, density and public facilities and services which would not commit adjacent or nearby resource land to nonresource use." Record 108 (minutes of August 21, 2003 planning commission hearing). We disagree with intervenors that the foregoing is insufficient to raise the issue of compliance with OAR 660-004-0018(2)(b)(B). Petitioners cited the rule, quoted it, and argued that the proposed exception is subject to its requirements. That is sufficient to alert the county and other parties that petitioners believe the rule is an applicable criterion that must be addressed in findings. That petitioners also cited, quoted, and made arguments under OAR 660-004-0018(2)(b)(C) does not indicate that other issues petitioners raised were waived.

On the merits, the county's findings do not address the requirements of OAR 660-004-0018(2)(b)(B). We disagree with intervenors that the evidence in the record "clearly supports" a finding of compliance with the rule. As petitioners point out, the county's principal rationale for concluding that the subject property is irrevocably committed to nonresource uses is based on alleged impacts from adjoining rural residential uses, such as dogs and crime, as well as externalities from resource use such as dust, spray and smoke. Petitioners note that active resource operations adjoin the subject property to the west and northwest, and argue that if the above rationale is valid it should be applied with equal force in addressing OAR 660-004-0018(2)(b)(B); *i.e.*, if residential development on adjoining committed exception lands leads the county to conclude that the subject property is committed to nonresource use, the county should also conclude that development of the subject property under the 5R zoning is likely to commit adjoining resource parcels to nonresource

uses. If so, petitioners argue, at a minimum the county must adopt zoning and density limits that ensure the subject property will not commit the adjoining resource lands to nonresource uses.

We tend to agree with petitioners that if on remand the county can establish that conflicts with adjoining rural residential development allowed under 5R zoning commit the subject property to nonresource uses, the county's findings addressing OAR 660-004-0018(2)(b)(B) must explain why residential development of the subject property under the 5R zoning will not present the same risk of committing resource land adjoining the subject property. Whatever the case, we certainly cannot say, given the complex nature of that inquiry, that the evidence in the record cited to us "clearly supports" a finding of compliance with OAR 660-004-0018(2)(b)(B).

The fourth assignment of error is sustained.

The county's decision is remanded.