BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JOE RUTIGLIANO,
Petitioner,

vs.

JACKSON COUNTY,
Respondent,

and

MARY-KAY MICHELSEN,
Intervenor-Respondent.

LUBA No. 2004-027

FINAL OPINION
AND ORDER

Appeal from Jackson County.

E. Andrew Long, Roseburg, filed the petition for review. With him on the brief was Dole, Coalwell, Clark, Mountainspring, Mornarich and Aitken, PC. Stephen Mountainspring, Roseburg, argued on behalf of petitioner.

No appearance by Jackson County.

Carrie A. Richter, Portland, filed the response brief and argued on behalf of intervenor-respondent. With her on the brief was Garvey Schubert Barer, PC.

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

AFFIRMED 09/16/2004

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioner appeals a county decision that denies his application for a comprehensive plan and zoning map amendment.

FACTS

This matter is before us for a third time. In an order on record objections in the present case, we briefly described the prior appeals:

> "In the county decision that was the subject of the first appeal, the county approved an exception to Statewide Planning Goal 3 (Agricultural Lands) and changed the comprehensive plan and zoning map designation for the subject property from exclusive farm use (EFU) to Rural-Residential 5-acre minimum (RR-5). The county required that petitioner seek that statewide planning goal exception to Goal 3, even though the EFU-zoned subject property apparently does not qualify as agricultural lands, because a comprehensive plan policy that was in effect during the proceedings that led to the county's first decision in this matter required an exception to change the EFU zoning. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 489 (2000).
>
> "In the second appeal, we remanded the county's decision to continue to apply its comprehensive plan policy that required an exception to change EFU zoning, even though the county had repealed that policy following our first decision and even though the applicant asked the county to reconsider the proposal under the amended comprehensive plan that did not mandate an exception for nonresourse land to be rezoned from EFU to RR-5. The key holding in the second appeal was that because this application involves an amendment to the county's unified comprehensive plan and zoning map it involves a comprehensive plan amendment and the ORS 215.427(3)(a) fixed goal post rule therefore did not apply. In our second decision, we concluded that the county must apply the local comprehensive plan standards in effect when it makes its decision. *Rutigliano v. Jackson County*, 42 Or LUBA 565 (2002). Following our decision in *Rutigliano*, the goal posts apparently have continued to change. From the intervenor's supplemental record objections, it appears that the applicant now would need an exception to apply RR-5 zoning to the property, but does not need an exception for RR-10 zoning. Apparently, intervenor modified the application following *Rutigliano* to seek RR-10 zoning under the county's current comprehensive plan." *Rutigliano v. Jackson County*, ___ Or LUBA ___ (LUBA No. 2004-027, June 10, 2004, Order on Record Objection), slip op 1-2.

To avoid confusion with the current appeal in this matter, we refer to the first appeal and our decision in that appeal as *JCCL*. We refer to the second appeal and our decision in that appeal as *Rutigliano I*. Following our remand in *Rutigliano I*, petitioner requested that the county apply a recently adopted Jackson County Comprehensive Plan (JCCP) "Rural Use" map designation. That Rural Use designation permits certain rural nonresource uses of land if it can be demonstrated that the land for which a Rural Use designation is sought is not resource land.[1] In its decision following our remand in *Rutigliano I*, the county applied the JCCP criteria for the Rural Use designation and determined that the subject property did not qualify for the Rural Use designation because the county found that the subject property qualifies as both agricultural and forest land.[2] This appeal followed.

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the county erred by failing to adopt findings that explain why the county believes the application does not qualify for an exception to Goals 3 and 4. The simple answer to this assignment of error is that petitioner did not request that the county approve an exception. Petitioner sought a comprehensive plan change to Rural Use, which does not require an exception. Petitioner made it clear in his request for the Rural Use designation that the request was made expressly to avoid the stringent standards that apply when considering a statewide planning goal exception.[3] Petitioner directs us to nothing in the record indicating that he requested that the

[1] The two types of resource land that are at issue in this appeal are agricultural and forest lands, which generally must be protected for farm or forest use under Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), unless a statewide planning goal exception is approved to allow other uses. The nonresource use that petitioner proposes for the subject property is rural residential use at a density of one house per 10 acres.

[2] A central issue in this appeal is whether the county improperly revisited the question of whether the subject property qualifies as agricultural land and forest land, when it found that it did not qualify as agricultural or forest land in the first appeal.

[3] Following our remand in *Rutigliano I*, petitioner stated in a January 23, 2003 letter to the board of commissioners:

county again consider whether a statewide planning goal exception could be approved for the subject property.

The second assignment of error is denied.

FIRST, THIRD AND FOURTH ASSIGNMENTS OF ERROR

When the county first considered petitioner's request for a new comprehensive plan map designation in *JCCL*, LDO 277.080(1) provided:

> "The redesignation conforms to the Jackson County Comprehensive Plan and all applicable Statewide Planning Goals for the area in which the proposed rezoning could occur and for the County as a whole.
>
> "Exceptions to Statewide Planning Goals 3 or 4, required for redesignating resource lands for nonresource uses, shall be based upon the amended Statewide Planning Goal 2, Part II (Exceptions) as interpreted by Oregon Administrative Rules (OAR Chapter 660, Division 4), including criteria contained in the Goal Exceptions Element of the Comprehensive Plan."

As we have already noted, in its first decision in this matter, the county applied the second of the above-quoted paragraphs and approved an exception to Goal 3. Based on that exception, the county found that the application complied with LDO 277.080(1). After our decision in *JCCL*, the second paragraph was repealed. In the challenged decision, the county found that the disputed application does not comply with LDO 277.080(1). It reached that conclusion because the county found that the application does not comply with the new JCCP Rural Use designation criteria; and the first paragraph of LDO 277.080(1) quoted above, which remains in effect, makes those criteria applicable to the requested JCCP map designation.

In his first assignment of error, petitioner argues that the county was prohibited from determining that the application does not comply with LDO 277.080(1) because the county already

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> "All other issues have been raised and reviewed by LUBA (twice) and the only determination remaining is that an exception to Goals 3 and 4 [is] not required and that the application for a Comprehensive Plan Map amendment from EFU to RR-5 is appropriate." Record 144.

Petitioner later asked that the property be placed in a RR-10 zone, but that letter does not request that the county again consider whether an exception to Goals 3 and 4 is warranted. Record 138.

found in *JCCL* that the proposal complies with LDO 277.080(1). In his third and fourth assignments of error, petitioner contends that the legal standards applied in this decision are identical to the legal standards that the county applied in *JCCL*. According to petitioner, under the "law of the case" doctrine that is discussed in *Beck v. Tillamook County*, 313 Or 148, 831 P2d 678 (1992), the county may not reconsider issues that have already been decided in *JCCL*.

The *Beck* "law of the case" or "waiver" principle concerns reviewability on appeal. *Beck v. City of Tillamook*, 105 Or App 276, 278, 805 P2d 144 (1991) *aff'd in part, rev'd in part*, 313 Or 148, 831 P2d 678 (1992).[4] Under the *Beck* waiver principle, issues that have been conclusively resolved at a prior point in a single continuous land use proceeding are not reviewable for a second time by LUBA or an appellate court at a later point in that proceeding.[5] As the Supreme Court explained in *Beck*:

> "ORS 197.763(7) provides:
>
> > "'When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.'
>
> "In other words, when the record is reopened, parties may raise new, unresolved issues that relate to new evidence. The logical corollary is that parties may not raise old, resolved issues again. When the record is reopened at LUBA's direction on remand, the 'new issues' by definition include the remanded issues, but not the issues that LUBA affirmed or reversed on their merits, which are old, resolved issues." 313 Or at 153 (footnote omitted).

In *Schatz v. City of Jacksonville*, 113 Or App 675, 680, 835 P2d 923 (1992), the Court of Appeals clarified that the "new" issues that may be raised during the later stages of a single

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[4] In this opinion, we will refer to the principle as the *Beck* waiver principle.

[5] We use the word "proceeding" in the same sense that the Oregon Supreme Court used the word "case" in *Beck*. 313 Or at 151. A single case or proceeding includes the initial local proceeding and decision on a land use application and subsequent LUBA and appellate court proceedings concerning that land use decision, as well as any subsequent local proceedings and LUBA and appellate court proceedings that may be necessary to finally resolve any legal challenges to the local government's final decision in that land use application.

proceeding and the "old resolved" issues that may not be raised during the later stages of a single proceeding do not complete the universe of potential issues on appeal:

> "However, another logical corollary is that issues may be considered on remand that were not or could not have been dispositively resolved on their merits in the appeal that resulted in the remand."

To summarize, the issues that were properly before the county following our remand in *Rutigliano I* included any "new" issues that were presented as a result of our remand in *Rutigliano I* and any issues that were not dispositively resolved in *Rutigliano I* and *JCCL*. Any old issues that were conclusively resolved in *Rutigliano I* and *JCCL* were not before the county following our remand in *Rutigliano I*. We first consider below whether the issues that the county resolved adversely to petitioner under criteria 2(B)(i) and 2(A)(ii) in the current decision are the same issues that petitioner believes the county resolved in his favor in *JCCL*. We then consider whether those issues were conclusively resolved in *JCCL*.

A. Old Issues and New Issues

While it is true that local governments may be barred from reconsidering old resolved issues that were previously decided and not challenged on appeal, when a different approval criterion is being applied on remand, the *Beck* waiver principle does not apply. Petitioner is correct that the only change to LDO 277.080 was the removal of the requirement that an exception be approved in all cases where an existing resource designation is being changed to a nonresource designation and, by itself, that change would not necessarily prevent application of the *Beck* waiver principle. LDO 277.080, however, also requires that the application comply with the comprehensive plan. Although LDO 277.080 may not have changed in any material way, the comprehensive plan arguably did. The JCCP Rural Use designation criteria that petitioner was required to satisfy in the most recent review did not exist at the time of the decision in *JCCL*. We consider whether those standards differ in any material way from the standards the county applied in *JCCL*, when it found that the subject property does not constitute agricultural land or forest land subject to Goals 3 or 4.

As we have already noted, the relevant legal issues in *JCCL* arose from the county's approval of an exception to Goal 3 to allow the requested rural residential map designation. As noted, in its initial decision in this matter, the county found that the subject property is not agricultural or forest land that must be protected for farm or forest use under Goals 3 and 4. Record 182. In the decision that is the subject of this appeal, the county applied its Rural Use designation criteria and determined that those criteria are not satisfied. Because the relevant criteria that govern whether property qualifies as agricultural land or forest land and the criteria that govern Rural Use designations are similar and in some cases identical, petitioner argues the county was precluded by *Beck* from concluding that the subject property does not qualify as agricultural or forest land in *JCCL* and later finding that the subject property does not satisfy the criteria for the Rural Use designation. We set out below the relevant criteria from *JCCL* and from the decision that is now before us.

1. The Relevant Criteria

a. Agricultural Lands

Among the criteria that governed the county's finding in *JCCL* that the subject property does not qualify as agricultural land that must be protected under Goal 3 is the Goal 3 definition of "Agricultural Land," which provides in relevant part:

> "[I]n western Oregon [agricultural land] is land of predominately Class I, II, III, and IV soils * * * as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. * * *"[6]

The county applied two standards in the decision that is the subject of this appeal that are substantively identical to the Goal 3 language quoted above. First, Rural Use Zoning District

[6] As relevant, the Land Conservation and Development Commission's (LCDC's) Goal 3 administrative rules adopts substantially the same definition of agricultural lands. OAR 660-033-0020(1)(a)(A) and (B).

criterion 2(A)(i) requires that the lands must be "predominantly composed of class V-VIII soils, as identified by the Natural Resource Conservation Service[.]"[7] Second, Rural Use Zoning District criterion 2(B)(i) prohibits consideration of lands that:

> "Are considered other lands which are suitable for farm use taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farm practices."

The Goal 3 definition is drafted to identify lands that *are* agricultural lands, so that they can be protected, and Rural Use criterion 2(A)(i) is designed to identify lands that *are not* agricultural lands. However, the Goal 3 agricultural land definition and Rural Use criteria 2(A)(i) and 2(B)(i) are otherwise identically worded and impose identical legal standards.[8] The Goal 3 standard the county applied in *JCCL* and Rural Use criteria 2(A)(i) and 2(B)(i) present the same issue.

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[7] The relevant portions of the new JCCP Rural Use Zoning District Criteria are set out below:

> "2. Zoning District Criteria: All of the following criteria must be met:
>
> "(A) Lands may be considered for the Rural Use designation when they:
>
> "(i) Are predominantly composed of class V-VIII soils, as identified by the Natural Resource Conservation Service;
>
> "(ii) Have a cubic foot site class rating of 6 or above, or production capability of less than 50 cubic feet per acre per year;
>
> "B) Lands that qualify under State law as farm, forest, or aggregate lands shall not be designated Rural Use. Thus, lands **do not** qualify for the Rural Use designation if they:
>
> "(i) Are considered other lands which are suitable for farm use taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farm practices." (Bold type in original).

[8] We discuss the county's application of criteria 2(A)(i) and 2(B)(i) in our discussion of the eighth assignment of error below.

b. Forest Lands

In its decision in *JCCL*, the county applied the following criterion from the JCCP, which is used to determine if land is forest land that is suitable for the county's "Forest Resource" comprehensive map designation:

> "Lands composed of existing and potential forest lands, identified as having a cubic foot site class rating ranging from two-plus through five or the equivalent. * * *"

In *JCCL*, the county found that 80 percent of the soils on the property were Class 6 soils and therefore the property did not qualify as forest lands. Record 189.

Among the lands that are potentially eligible for the Rural Use designation are the following:

> "[Lands that h]ave a cubic foot site class rating of 6 or above, or production capability of less than 50 cubic feet per acre per year[.]"

The Forest Resource criterion implements Goal 4 and is designed to identify lands that *are* forest lands. The county's Rural Use criterion 2(A)(ii) is designed to identify lands that *are not* forest lands. In this regard they resemble the Goal 3 and Rural Use criterion 2(A)(i). But unlike the criteria governing agricultural lands, Rural Use criterion 2(A)(ii) differs from the Forest Resource criterion because it is more precise and establishes a 50 cubic feet per acre per year standard for determining whether land may be considered for the Rural Use designation.[9]

In summary, the question of whether the subject property qualifies as agricultural land (and for that reason may not be considered for a Rural Use designation) is governed by the same legal standard that governed the county's finding in *JCCL* that the subject property does not qualify as agricultural land subject to Goal 3. If that issue was conclusively resolved in petitioner's favor in *JCCL*, a different resolution of that issue at this later stage of these proceedings is barred by *Beck*. The question of whether the subject property qualifies as forest land (and for that reason may not be considered for a Rural Use designation) is not governed by the same legal standard that governed

[9] We discuss the county's interpretation and application of this criterion in our discussion of the seventh assignment of error below.

the county's finding in *JCCL* that the subject property does not qualify as forest land subject to Goal 4. Therefore, even if the Goal 4 issue was conclusively resolved in petitioner's favor in JCCL, the county's resolution of the issue presented under criterion 2(A)(ii) is not barred by *Beck*.

B. Old Issue Must Have Been Conclusively Resolved

Although petitioner questioned the county's position that an exception was necessary under the prior version of LDO 277.080 that was applied in *JCCL*, that interpretation was never challenged at LUBA in *JCCL* or *Rutigliano I.* Because all parties accepted that interpretation, it was legally irrelevant in *JCCL* and in *Rutigliano I* whether the subject property qualifies as farm or forest land subject to protection under Goals 3 and 4. While there is language in our decision in *JCCL* stating that the subject property does not qualify as agricultural land that the county is required to protect under Goal 3, that language was based entirely on the unchallenged findings in the county's initial decision that the subject property did not qualify as agricultural or forest lands. *JCCL*, 38 Or LUBA at 491 n 1. However, those findings were legally irrelevant, because under the county's interpretation of LDO 277.080 and the JCCP an exception to Goals 3 and 4 was required in *JCCL* to secure the requested rezoning without regard to whether the subject property was agricultural land or forest land.[10] The questions of whether the subject property qualifies as agricultural land that is within the protection of Goal 3 or forest land within the protection of Goal 4 were not issues that could have been presented and conclusively resolved in our decision in *JCCL*. Because those issues were neither presented nor conclusively resolved in *JCCL*, the county's

[10] Our footnote in *JCCL* pointing out that no one challenged the county's finding that the subject property does not qualify for protection under Goal 3 at best was unnecessary and at worst was misleading. Because that county finding was irrelevant to the county's decision in *JCCL* to approve an exception, the opponents of the exception had no reason to assign error to that finding, and we almost certainly would not have sustained such an assignment of error if it had been asserted, because such an assignment of error would not have provided a basis for remand even if it had been sustained.

consideration of the Rural Use designation criteria that preclude Rural Use designations for agricultural or forest lands was not barred by *Beck*. *Schatz*, 113 Or App at 680.[11]

The first, third and fourth assignments of error are denied.

FIFTH AND SIXTH ASSIGNMENTS OF ERROR

Petitioner argues that the county misconstrued the applicable law by interpreting its Rural Use criteria to require that an applicant demonstrate any land for which a Rural Use designation is requested is neither agricultural land nor forest land. The Rural Use plan designation provides:

> "(2) Zoning District Criteria: All of the following criteria must be met:
>
> "(A) Lands may be considered for the Rural Use designation when they:
>
> "(i) Are predominantly composed of class V-VIII soils, as identified by the Natural Resource Conservation Service;
>
> "(ii) Have a cubic foot site class rating of 6 or above, or production capability of less than 50 cubic feet per acre per year[.]"

According to petitioner, an applicant can satisfy subsection (A) by demonstrating *either* that the land is not farm land under subsection (i) *or* by demonstrating that the land is not forest land under subsection (ii). The county interpreted the criteria to require a demonstration that the land is *neither* farm land *nor* forest land.

We review a local governing body's interpretation of its comprehensive plan under the standard set out at ORS 197.829(1) and the Court of Appeals' decision in *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003).[12] Thus, we must affirm the county's

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[11] As we have already noted, our suggestion in *JCCL* that the issue of whether the subject property qualifies as agricultural land might have already been finally decided by the county was unfortunate. *See* n 10. Similarly our recognition in *Rutigliano I* of the parties' dispute about the potential applicability of *Beck* can be read to suggest some support for petitioner's view. *Rutigliano I*, 42 Or LUBA at 577 n 11. However, we expressly did not attempt to resolve that dispute and left open the question of whether county consideration of any of the disputed issues following our remand in *Rutigliano I* would actually be barred by *Beck*. *Id*.

[12] ORS 197.829(1) provides:

> "[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

interpretation unless we determine that the interpretation is inconsistent with the express language or policy of the JCCP. The county's failure to include a conjunction between criterion 2(A)(i) and 2(A)(ii) results in an ambiguity. However, the county's interpretation is certainly no more contrary to the language of the criteria than petitioner's interpretation. Without considering the context or purpose of the provision, a reasonable argument could be made for either interpretation. Once the context and purpose are considered, however, it becomes clear that the correct interpretation is that an applicant must meet both requirements.

The Rural Use designation was adopted to allow rural land that was erroneously zoned for resource use to be redesignated to allow rural nonresource uses. The two most common types of resource land are farm and forest land. Frequently land will qualify as both agricultural and forest land, and LCDC's rules allow counties to plan and zone such lands for either farm or forest use. OAR 660-006-0015(2); 660-033-030(4). Given the possibility that a property may qualify as both agricultural and forest lands, it is more logical to read criterion 2(A)(i) and (ii) as the county does. The county's interpretation of criterion 2(A)(i) and (ii) is not inconsistent the express language or purpose of the JCCP or the Statewide Planning Goals and administrative rules it was adopted to implement.

The fifth and sixth assignments of error are denied.

"(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

"(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

"(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or

"(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

SEVENTH ASSIGNMENT OF ERROR

Petitioner argues that the county erred in concluding that the application did not satisfy the cubic foot per acre per year requirements of the Rural Use comprehensive plan designation. As we have already noted, criterion (2)(A)(ii) provides that Rural Use lands must:

> "Have a cubic foot site class rating of 6 or above, or production capability of less than 50 cubic feet per acre per year[.]"[13]

Apparently the original staff report that led to the conclusion in *JCCL* that the subject property is not properly viewed as forest lands reached that conclusion based on information supplied by the applicant that 80 percent of the property had soils with a cubic foot site class rating of 6 or above. In concluding that the subject property viewed as a whole has production capability of more than 50 cubic feet per acre per year, resulting in a cubic foot site class rating of less than six, the board of commissioners adopted the staff report explanation as to how the cubic foot site class rating should be computed:[14]

> "* * * The digitized GIS mapping indicate that 53% of the property is in the Tallowbox class VI or VII series * * *. Forest capability for the predominate Tallowbox soil types is indicated by NRCS data to be class 6, equivalent to 42.9 cubic feet per acre per year of commercial wood fiber volume, over 53% of the total 65.47 acres. The forest capability rating for the remaining 43% of the subject property, consisting of Manita loam and Manita-Vannoy complex is class 4, equivalent to 85.8 cubic feet per acre per year. Based on the digital mapping, the total forest capability over the entire property would be 4129 cubic feet per year, resulting in an average expected production of 63.1 cubic feet per acre per year, considering only the NRCS soils data itself. The NRCS data was adopted in the previous County decision on this matter, but not the digitized version currently available." Record 175-76.

Although petitioner apparently takes issue with the county's decision to compute the subject property's average cubic foot per acre per year production capability, based on the percentage of different soil types on the property, petitioner does not explain why applying criterion 2(A)(ii) in that

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[13] *See* n 7.

[14] The board of commissioners' finding adopting the staff explanation appears at Record 12.

way is impermissible, and we do not see that it is.[15] There is substantial evidence in the whole record that demonstrates that the property does not meet the criteria for a Rural Use plan designation because it has a forest capability production of over 50 cubic feet per acre per year. Petitioner was given the opportunity to provide more detailed evidence addressing that criterion, but he declined. The county did not err in finding the application does not satisfy Rural Use criterion 2(A)(ii).

The seventh assignment of error is denied.

EIGHTH ASSIGNMENT OF ERROR

Our resolution of the first through seventh assignments of error means that it is unnecessary to consider petitioner's eighth and ninth assignments of error. That is because a decision to deny a quasi-judicial land use application need only be supported by one adequate basis for denial. *Horizon Construction, Inc. v. City of Newberg*, 28 Or LUBA 632, 635 (1995). Therefore, because we have already rejected petitioner's challenge to the county's finding that the application for a Rural Use designation must be denied because the subject property qualifies as forestland under criterion (2)(A)(ii), it does not matter whether the county erroneously concluded that the application must also be denied because the subject property qualifies as "other lands which are suitable for farm use" under criterion (2)(B)(i). However, because this matter is before us for a third time, in order to render a complete review of petitioner's challenge to the decision at issue in this appeal, we consider those assignments of error.

As it did in *JCCL*, the county found that the soils on the subject property are predominantly class VI and VII. Therefore, if it were not for the subject property's failure to comply with criterion 2(A)(ii), the subject property could be considered for the Rural Use designation under criterion 2(A)(i). However, even where criteria 2(A)(i) and 2(A)(ii) are satisfied, criterion 2(B)(i) disqualifies

[15] Criterion 2(A)(i), like Goal 3, expressly imposes a predominant soil type standard. *See* n 7. Criterion 2(A)(ii) does not expressly impose a predominant soil type standard.

> "[O]ther lands which are suitable for farm use taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farm practices." *See* n 7.

In addition to finding that the application could not be approved because the property has a forest production capability of over 50 cubic feet per acre per year, the county also denied the application because the property has recently been put to use as a cervid holding operation.[16] According to the county, a cervid holding operation is a farm use. In his eighth assignment of error, petitioner challenges the county's finding that the subject property qualifies as other lands suitable for farm use, based solely on its prior use as a cervid holding operation.

It may well be that petitioner's brief actual use of the subject property for a cervid holding operation or other relevant factors could provide a basis for the county to adopt adequate findings that explain why it believes the subject property qualifies as "other lands which are suitable for farm use" under criterion 2(B)(i), despite the fact that it has predominantly Class VI and VII soils.[17] However, under criterion 2(B)(i), a conclusion that a property with predominantly non-farm soils should nevertheless be viewed as "other lands suitable for farm use" must be based on the considerations specified in the criterion. *See* n 7. Even if the cervid holding operation that petitioner has operated on the property is properly viewed as a farm use, brief employment of a property for farm use is not one of the considerations listed in criterion 2(B)(i) and does not necessarily support a conclusion that the subject property is suitable for farm use.

We agree with petitioner that the county's findings concerning criterion 2(B)(i) are inadequate, and for that reason we sustain the eighth assignment of error. While those findings are inadequate to supply an alternative basis for sustaining the county's decision, they also are

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[16] A cervid holding operation is essentially a ranching-style operation involving the raising and holding of deer and elk.

[17] Petitioner complains that the county "fails to recognize that maintaining the cervid holding operation on this property requires the transport of feed to the property at essentially the same level as if the cervid holding operation were carried out on a paved parking lot." Petition for Review 26.

unnecessary to support the county's decision to deny the application based on its findings concerning criterion 2(A)(ii). Accordingly, the eighth assignment of error provides no basis for reversal or remand.

NINTH ASSIGNMENT OF ERROR

In his ninth assignment of error, petitioner alleges "the county erred in failing to conclude that the cervid holding facility is an agricultural operation under LDO 222.020(3) that is allowed on rural residential parcels." Petition for Review 26. Petitioner makes no attempt to explain why the finding he challenges under the ninth assignment of error is critical to the county's decision, and we do not see that it is. The ninth assignment of error is denied.

The county's decision is affirmed.