



1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision granting approval  
4 for a dwelling on a 34.63 acre parcel zoned Woodlot Resource  
5 District (WR).

6 **MOTION TO INTERVENE**

7 Carl G. Brownlee, Vernice Brownlee, James La Flamme and  
8 Leona La Flamme move to intervene on the side of respondent.  
9 There is no opposition to the motion, and it is allowed.

10 **INTRODUCTION**

11 Goal 2 of the acknowledged Josephine County  
12 Comprehensive Plan is to "Conserve and Develop the Forest  
13 Lands of Josephine County." Several policies are set out in  
14 the plan under Goal 2, including the following:

15 "1. Because of the importance of forest lands and  
16 uses to Josephine County and the wide range  
17 of soil types, management and harvesting  
18 techniques, an evaluation system will be  
19 developed using soil data from the soil  
20 survey of Josephine County prepared by the  
21 Soil Conservation Service and management data  
22 from the U.S. Forest Service. A comparative  
23 rating and evaluation system will be utilized  
24 to identify prime forest lands and other  
25 forest lands so they may be placed in an  
26 appropriate zone to conserve the forest  
27 potential of forest lands in the County.  
28 This rating system will be used for all  
29 forest land use allocations and shall be  
30 known as a Composite Internal Rate of Return  
31 (CIRR) system.

32 \* \* \* \* \*

33 "4. Authorization of a forest dwelling on lands

1           zoned Woodlot Resource is subject to the  
2           provisions of the WR zone and conditioned  
3           upon a statement of the land owner to  
4           implement the forest management program  
5           designed for the property in question. \* \* \*  
6           It is the policy of Josephine County to  
7           authorize forest dwellings on lands zoned WR  
8           with a Composite Internal Rate of Return  
9           (CIRR) above 3.49 pursuant to a management  
10          plan designed to address the County's forest  
11          management objectives \* \* \*.

12          "\* \* \* \* \*"

13          The Josephine County Zoning Ordinance (JCZO) makes  
14          provisions for two types of dwellings in the WR zone.  
15          JCZO 4.030(1) lists the following permitted use:

16          "Single family dwelling \* \* \* that is necessary  
17          [for] and accessory to carry out commercial  
18          resource uses \* \* \*. A resource management plan  
19          satisfying Goal 2 Policy 4 \* \* \* shall serve as  
20          the basis for justifying that a forest dwelling is  
21          necessary for and accessory to a forest use. \* \*  
22          \*"<sup>1</sup>

23          In this opinion, we refer to the dwellings permitted by JCZO  
24          4.030(1) as "forest dwellings."

25          A second type of dwellings (hereafter referred to as  
26          nonforest dwellings) is allowed on WR zoned parcels under  
27          JCZO 4.030(6), which provides as follows:

28          "One single family residential dwelling not  
29          provided in conjunction with commercial forest use  
30          \* \* \*."

31          JCZO 4.030(6) imposes a number of standards that must be

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<sup>1</sup>The omitted portions of JCZO 4.030(1) set out detailed requirements for the forest management plans required by that section.

1 satisfied to approve a nonforest dwelling in the WR zone,  
2 but preparation of a forest management plan is not  
3 required.<sup>2</sup>

4 In the decision challenged in this appeal, the county  
5 found that the 34.63 acre parcel has a CIRR of 2.87. The  
6 decision applies the criteria governing approval of  
7 nonforest dwellings and adopts findings addressing each of  
8 the approval criteria set forth at JCZO 4.030(6). See n 2,  
9 supra.

10 **FIRST ASSIGNMENT OF ERROR**

11 "Josephine County erred by approving construction

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<sup>2</sup>JCZO 4.030(6) establishes the following criteria for approval of nonforest dwellings in the WR zone:

- "a. The proposed use is compatible with and will not significantly affect existing forest uses on the site or surrounding lands.
- "b. The proposed use will not interfere with forest operations and practices;
- "c. The proposed use will not alter the stability of the overall land use pattern in the area;
- "d. The proposed use is consistent with forest policies in the comprehensive plan and the purposes of the zone.
- "e. Demonstration that the residence will be situated upon the reasonably least suitable land for forest uses, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of tract.
- "f. In areas identified as sensitive deer habitat, findings must be made to show that a residence will not cause the density of dwellings in the winter range to exceed 32 homes per 2 square miles. The calculation will include the area outside impacted lands and below 2500 feet elevation."

1 of a forest dwelling within the Woodlot [Resource]  
2 Zone, without requiring a forest management plan,  
3 [as] required by Policy 4 of Goal 2 of the  
4 comprehensive plan."

5 Petitioner argues the county erred by failing to  
6 require a forest management plan, as provided by plan Goal  
7 2, Policy 4. Citing Baker v. City of Milwaukie, 271 Or 500,  
8 533 P2d 772 (1975), petitioner argues that to the extent  
9 JCZO 4.030(6) purports to allow nonforest dwellings without  
10 requiring a forest management plan, JCZO 4.030(6) is  
11 inconsistent with plan Goal 2, Policy 4, and the plan  
12 requirement controls.

13 We do not agree with petitioner that applying JCZO  
14 4.030(1) and (6), as they are written, conflicts with plan  
15 Goal 2, Policy 4. The applicability of Goal 2, Policy 4 is  
16 limited in two ways. It is limited to forest dwellings and  
17 is further limited to lands with a CIRRR above 3.49. JCZO  
18 4.030(1) implements this policy. We see nothing in plan  
19 Goal 2, Policy 4, or the other policies under plan Goal 2,  
20 that limits the county's authority to adopt standards for  
21 approval of nonforest dwellings or requires that approval of  
22 nonforest dwellings include a requirement for a forest  
23 management plan.<sup>3</sup> Absent such a limitation in the plan, we

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<sup>3</sup>Plan Goal 2 is the county's plan provision for implementing Statewide Planning Goal 4 (Forest Lands). We note that the Land Conservation and Development Commission rules implementing Goal 4 explicitly permit nonforest dwellings under certain circumstances and do not require a forest management plan. OAR 660-06-027.

1 do not agree with petitioner that the provisions in the JCZO  
2 for approval of nonforest dwellings are inconsistent with  
3 the plan.<sup>4</sup>

4 The first assignment of error is denied.

5 **SECOND ASSIGNMENT OF ERROR**

6 "Josephine County erred in determining that the  
7 proposed dwelling would be compatible with  
8 surrounding development."

9 Although petitioner contends the county erroneously  
10 determined the proposed dwelling will be compatible with  
11 surrounding development, petitioner makes no attempt to  
12 challenge the findings adopted by the county addressing  
13 JCZO 4.030(6)(a).<sup>5</sup> Intervenors cite findings and evidence  
14 in the record which they contend demonstrate the area around  
15 the subject property is already parcelized and includes a  
16 large number of dwellings. Intervenors contend the findings  
17 and evidence are adequate to demonstrate the proposed  
18 dwelling will be compatible with surrounding development.

19 Petitioners at LUBA must do more than allege error;  
20 they must include sufficient argument to explain the basis

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<sup>4</sup>Statewide Planning Goal 2 (Land Use Planning) requires that the zoning ordinance be "consistent with and adequate to carry out the [comprehensive plan]." The Josephine County Comprehensive Plan and Zoning Ordinance have been acknowledged as complying with the statewide planning goals. ORS 197.251.

<sup>5</sup>Neither does petitioner identify which of the JCZO 4.030(6) approval criteria he believes the county's compatibility determination violates. We assume JCZO 4.030(6)(a) forms the basis for his challenge under this assignment of error, because it employs the operative term "compatible."

1 for their allegation of error. Further, we have explained  
2 on numerous occasions a petitioner may not fail to make a  
3 specific challenge to the findings adopted in support of a  
4 decision, or the evidentiary support for that decision, and  
5 expect to prevail in an appeal before this Board based  
6 simply on expressions of disagreement with the challenged  
7 decision. McCarty v. City of Portland, \_\_\_ Or LUBA \_\_\_  
8 (LUBA No. 90-090, October 8, 1990), slip op 5; Dougherty v.  
9 Tillamook County, 12 Or LUBA 20, 34 (1984); Tichy v. City of  
10 Portland, 6 Or LUBA 13, 23-24 (1982); see also Gann v. City  
11 of Portland, 12 Or LUBA 1, 6 (1984).

12 Petitioner does not argue the county failed to adopt  
13 findings addressing the compatibility requirement of  
14 JCZO 4.030(6)(a) or challenge the evidentiary support for  
15 those findings. The closest petitioner comes to making a  
16 challenge to the county's findings concerning compatibility  
17 is the following argument:

18 "The cumulative impact on this area needs to be  
19 considered. Are the [intervenors] going to be  
20 allowed to continually subdivide their land into 5  
21 acre parcels, not worrying about timber? Or are  
22 they going to be required to produce a forest  
23 management plan, if they want to construct a  
24 dwelling on their property?" Petition for Review  
25 8.

26 Because the challenged decision does not approve a  
27 partition, we fail to see the relevance of possible future  
28 subdivisions. As we already explained, a forest management  
29 plan is not required under JCZO 4.030(6). The argument that

1 the county must consider cumulative impacts might  
2 potentially have merit.<sup>6</sup> However, the findings and evidence  
3 cited by intervenors acknowledge the existence of past  
4 parcelization and development in the area and in fact rely  
5 on this historical development in concluding that the  
6 proposed dwelling will be compatible. Because petitioner  
7 does not attack the adequacy of these findings or their  
8 evidentiary support, we are presented with no basis for  
9 reversal or remand.

10 The second assignment of error is denied.

11 **THIRD ASSIGNMENT OF ERROR**

12 "Josephine County erred in finding that the  
13 proposed dwelling would not interfere with forest  
14 operations and practices."

15 The county found that the proposed dwelling will not  
16 interfere with forest operations on adjoining properties and  
17 specifically found there would be no interference with  
18 petitioner's forest operations due in part to the distance  
19 of the proposed dwelling from petitioner's property and an  
20 intervening roadway and creek.<sup>7</sup> Intervenors cite testimony  
21 in the record that the dwelling would not interfere with  
22 forest operations and practices on adjoining properties.

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<sup>6</sup>Cumulative impacts would appear to be more relevant to the JCZO 4.030(6)(c) requirement that the dwelling "not alter the stability of the overall land use pattern in the area."

<sup>7</sup>Once again, petitioner does not identify the criterion he believes the county erroneously found to be satisfied. We assume JCZO 4.030(6)(b) is the criterion.

1           Petitioner's entire argument under this assignment of  
2 error repeats contentions petitioner made during the local  
3 proceedings that, without a forest management plan, past  
4 occurrences of bug infestations might be repeated in the  
5 future.

6           Once again, petitioner is arguing a forest management  
7 plan ought to be required in conjunction with approval of a  
8 nonforest dwelling, when the relevant approval criteria do  
9 not require such a management plan. With regard to the  
10 possibility of future bug infestations, petitioner makes no  
11 attempt to connect that possibility with the dwelling  
12 approved by the challenged decision, and the county  
13 specifically found that the dwelling would reduce the  
14 likelihood of such an infestation. Petitioner does not  
15 challenge that finding.

16           The third assignment of error is denied.

17           **FOURTH ASSIGNMENT OF ERROR**

18           "Josephine County erred in requiring [petitioner]  
19 to carry the burden of proof."

20           **FIFTH ASSIGNMENT OF ERROR**

21           "Josephine County erred in relying on the CIRR  
22 method of determining the timber productivity for  
23 the area. The dot county method of analyzing  
24 soil, to determine whether or not timber can be  
25 grown, is not satisfactory or persuasive."

26           **SIXTH ASSIGNMENT OF ERROR**

27           "Josephine County erred in determining that the  
28 winter deer habitat would not be adversely  
29 affected by the proposed residence."

1           Petitioner offers no argument in support of these  
2 assignments of error, and for that reason they are rejected.

3           The county's decision is affirmed.

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