

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 DEPARTMENT OF LAND CONSERVATION)
5 AND DEVELOPMENT,)

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LUBA No. 92-003

12 KLAMATH COUNTY,)

FINAL OPINION
AND ORDER

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REMANDED 05/18/92

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

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision granting a building
4 permit for a nonforest dwelling.

5 **MOTION TO INTERVENE**

6 John M. Schoonover, the applicant below, moves to
7 intervene on the side of respondent. There is no opposition
8 to the motion, and it is allowed.

9 **FACTS**

10 An 80 acre parcel (Tract 1214) contains 16 five acre
11 lots. Tract 1214 is designated Forest by the Klamath
12 County Comprehensive Plan and Land Development Code. The
13 challenged decision grants a building permit for one of the
14 16 five acre lots.

15 Tract 1214 is subject to a Land Conservation and
16 Development Commission enforcement order. See ORS 197.319
17 to 197.335. Under the terms of that enforcement order, the
18 county is prohibited from issuing building permits or mobile
19 home placement permits for the 16 lots in Tract 1214, unless
20 six criteria stated in the enforcement order are satisfied.

21 **ASSIGNMENT OF ERROR**

22 "The county failed to make adequate findings
23 supported by substantial evidence that a building
24 permit for Tract 1214 meets the criteria set out
25 in Enforcement Order No. 89-EO-419 and the Klamath
26 County Land Development Code. In addition, the
27 [county] incorrectly interpreted the criteria
28 applicable to the decision on the building
29 permit."

1 One of the six approval criteria specified in the
2 enforcement order provides as follows:

3 "The proposed nonforest use is situated upon a
4 parcel of land generally unsuitable for the
5 production of forest crops and livestock,
6 considering the terrain, adverse soil or land
7 conditions, [drainage] and flooding, vegetation,
8 location and size of tract. 'Generally
9 unsuitable' means land does not have a timber
10 productivity rating of I through VI or is [not]
11 required to be reforested under the [Forest
12 Practices Act,] unless findings and reasons are
13 provided which thoroughly explain why other
14 factors present make the land generally unsuitable
15 for the production of forest crops and livestock.
16 For example, having only generalized soils mapping
17 shall not be used to find that property containing
18 cubic foot site [class] V is generally unsuitable
19 for forest use." (Emphasis in original.)
20 Supplemental Record 8.

21 Under the above quoted criterion, land with a timber
22 productivity rating of class I through VI is presumptively
23 suitable for forest use. The subject property contains
24 soils with a timber productivity rating of class V, and may
25 be expected to yield 50 to 85 cubic feet of timber per year
26 per acre.

27 The county's decision appears to be based on arguments
28 by the applicant that the property (1) contains soils of
29 below average timber productivity and has not been very
30 productive in the past, (2) presently suffers from a pine
31 beetle infestation, and (3) is too small for a commercially
32 feasible forest operation.

33 Regarding the first point, petitioner presented
34 testimony during the local proceedings that only a very

1 small percentage of privately owned forest lands in eastern
2 Oregon have a site class productivity rating that is
3 superior to that of the subject property. While the timber
4 productivity of the subject property may be below the
5 national average, petitioner argued during the local
6 proceedings, based on United States Forest Service
7 statistics, that land in eastern Oregon with a site class
8 such that the land will produce more than 50 cubic feet of
9 timber per acre per year should be considered suitable for
10 timber production.

11 In essence, the county and petitioner disagree about
12 whether property which will yield 50 to 80 cubic feet of
13 timber per acre per year is suitable for forest use.
14 Petitioner, the agency that adopted the enforcement order's
15 generally unsuitable standard, argues that it is; the county
16 argues that it is not. Without a more focused and detailed
17 effort by the county to explain why the subject property
18 should not be considered suitable for forest use, we agree
19 with petitioner that the county has failed to demonstrate
20 that such is the case.

21 The only specific reasons offered by the county to
22 explain why this property should be considered generally
23 unsuitable for forest use, even though it contains soils of
24 site class I through VI, are that the property includes some
25 timber with pine beetle infestation, and the lot is too
26 small by itself to be used for commercial forest purposes.

1 Neither of these reasons is sufficient to show the property
2 is generally unsuitable for forest use.

3 Intervenor does not argue the pine beetle infestation
4 represents a permanent or long term limitation on the timber
5 productivity of the property. In fact, intervenor
6 apparently plans to remove the diseased trees. The pine
7 beetle infestation therefore does not support the county's
8 general unsuitability conclusion. Neither does the small
9 size of the subject lot. The lot is part of an 80 acre
10 tract. There is no attempt to demonstrate the 5 acre lot or
11 80 acre tract could not be managed with other larger
12 forested parcels in the area. Without such a demonstration,
13 the size of the subject property provides no basis for
14 concluding it is generally unsuitable for forest use.
15 Samoilov v. Clackamas County, ___ Or LUBA (LUBA No. 91-131,
16 December 12, 1991), slip op 3-4.

17 We agree with petitioner that the challenged decision
18 fails to demonstrate the subject lot is generally unsuitable
19 for forest use, as the above quoted enforcement order
20 criterion requires. We therefore sustain the first
21 assignment of error.

22 The county's decision is remanded.¹

¹We do not consider petitioner's arguments that other enforcement order criteria are violated by the challenged decision. ORS 197.835(9)(a) requires that we decide all issues when reversing or remanding a decision, to the extent we can do so consistent with the deadline established for issuing our final opinion and order. Resolution of the remaining issues raised by petitioner concerning the other enforcement order criteria would

require further extensions of the statutory deadline for issuing our final opinion and order.