BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DEBORAH H. FRAZEE, PHILIP J. FRAZEE,
LAURIE ANN GOETZ and
STEVEN L. GOETZ,
Petitioners,

vs.

JACKSON COUNTY,
Respondent,

and

KENNETH L. ALSTON,
Intervenor-Respondent.

LUBA No. 2003-028

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Deborah H. Frazee, Philip J. Frazee, Laurie Ann Goetz, and Steven L. Goetz, Eagle Point, filed the petition for review. Deborah H. Frazee argued on her own behalf.

No appearance by Jackson County.

John R. Hanson, Medford, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Werdell and Hanson.

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

REMANDED 09/03/2003

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

Opinion by Briggs.

NATURE OF THE DECISION

Petitioners appeal a county decision that (1) concludes that a 40-acre parcel was legally created prior to January 1, 1993, and (2) approves the siting of a nonfarm dwelling on that parcel.

MOTION TO INTERVENE

Kenneth L. Alston, the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

FACTS

The subject parcel is zoned Exclusive Farm Use (EFU). To the northwest, north and northeast are smaller parcels, zoned Farm Residential (F-5) and Rural Residential (RR-5). Most of those smaller parcels are developed with single-family dwellings. To the east is an undeveloped 40-acre parcel zoned Open Space Reserve (OSR)(tax lot 3400). To the south are three parcels zoned EFU. Those parcels are developed with dwellings. Only one of those three parcels is also used for resource purposes. To the southeast and southwest are parcels owned by Pacific Power and Light (PPL). Some of the PPL property is developed with high-voltage transmission lines. To the west is an undeveloped 40-acre parcel owned by the United States and managed by the U.S. Bureau of Land Management (BLM). Farther to the west is a municipal landfill.

The subject property is undeveloped. Class IV soils make up approximately 92 percent of the property. Class VI soils make up approximately eight percent of the property. The property is not irrigated, and is not currently put to agricultural use or assessed as farmland. There is a dispute among the parties as to whether the subject property has been used for cattle grazing in the past.

In the 1970s, the parcel was part of a 440-acre tract owned by Faydrex Inc.; however, over time the parcels that made up that 440-acre tract have been conveyed to third parties.

Intervenor purchased the subject property in 1999.[1] Intervenor applied to place a nonfarm dwelling on the subject parcel on July 5, 2002. The planning director approved the application, subject to conditions. Petitioners Goetz, who reside on the parcel bordering the subject property to the north, appealed the planning director's decision to the county hearings officer. The hearings officer also approved the application, subject to conditions. This appeal followed.

FIRST ASSIGNMENT OF ERROR

ORS 215.284(2) provides, in relevant part:

> "* * * [A] single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:
>
> "* * * * *
>
> "(c) The dwelling will be sited on a lot or parcel created before January 1, 1993[.]"[2]

JCLDO 15.020(1) sets out the circumstances in which the county will conclude that a lot or parcel has been "created:"

> "Lots or parcels which were established by any of the methods listed in this Subsection and which did not require division approval under the regulations listed in [JCLDO 15.020(2)], then applicable, shall be considered legally separate tracts. Such lots or parcels will not require further land division review or approvals not required at the time of such division, provided, however, that any lot or parcel resulting from the division shall be subject to all other regulations and standards which are in effect at the time land development permit approval is sought.
>
> "(A) Execution of a recorded or unrecorded properly signed and dated conveyance, security document, or contract to convey (not including an earnest money agreement) which clearly describes the tract to be

[1] In that transaction, intervenor also purchased another 40-acre parcel that was part of the Faydrex, Inc. property. However, the second 40-acre parcel is not contiguous to the subject property.

[2] Except for ORS 215.284(2)(c), the county has adopted the nonfarm dwelling standards set out in ORS 215.284(2) and codified them at Jackson County Land Development Ordinance (JCLDO) Section 218. Except for our discussion under the fourth assignment of error, we shall refer only to the statutory provisions.

> conveyed. * * * [N]o document which creates a tract of land after September 1, 1973, shall be recognized as creating a lot or parcel for development purposes if the resulting tracts would have failed to comply with the standards for development in effect at the time the document was signed, except as to a resulting tract which conforms with standards in effect at the time development permit approval is sought.
>
> "* * * * *
>
> "(G) Segregation of a tax lot or parcel for financing or security purposes."

The planning director concluded that the subject property was created as a result of two actions: (1) the "segregation" of the 40-acre parcel to the east from the remainder of the Faydrex, Inc. holdings in 1972; and (2) the conveyance of a 40-acre parcel to the south to a third party in 1976. The hearings officer relied on a staff memorandum that explained the planning director's conclusion and also concluded that the "date of creation" standard was met.[3]

A drawing, not to scale, is set out below to illustrate the relationship between the subject property, the properties described in the county's decision, and the remainder of the Faydrex, Inc. tract.

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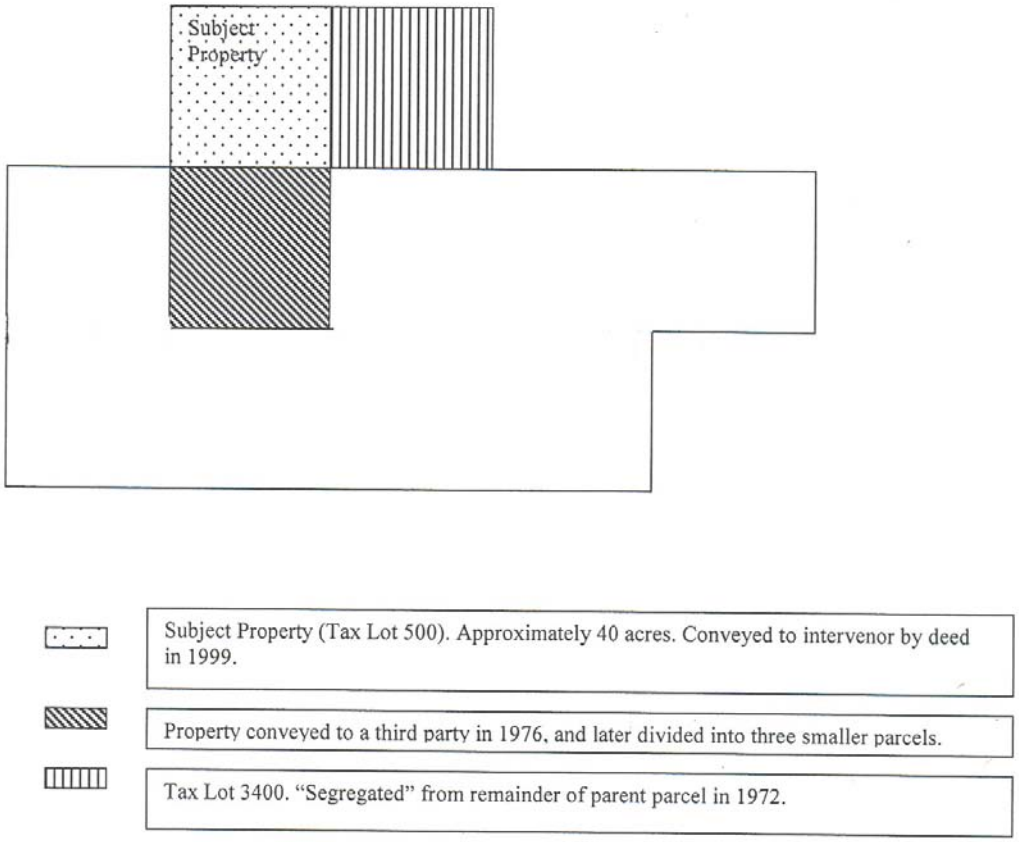
[3] The hearings officer's findings state:

> "A general question regarding the legality of the subject parcel was raised * * *. The Hearings Officer has reviewed Exhibit 20 in which [planning] staff concluded the subject parcel was legal, along with the documentation included therein, and agrees that the subject parcel is a legal lot for the reasons stated by staff at [Record 107.]" Record 5.

The document at Record 107 states, in relevant part:

> "[The subject property] was described with several other contiguous properties on OR 70-01463. There is a JV [Journal Voucher] on the deed record card right after this OR which is JV #70-03271. This may have been a segregation request for this property, but I was unable to locate the JV in the JV file. In file 2000-13-FC, Sandy recognized Tax Lot 36-1E-06 TL 3400 [the 40-acre parcel abutting the subject property to the east] as a separate legal parcel because a segregation request was processed through JV 72-03948. In 1976, the [40 acres located immediately to the south of the subject property] was legally conveyed by OR 76-19353 in accordance with the OSD-5 zoning regulations in effect at the time. These two segregations effectively split [the subject property] from the remainder of the properties described in OR 70-01462. So, even though that earlier JV is no longer available, it is possible to determine that [the subject property] is a legal parcel."



Petitioners argue that in order to satisfy ORS 215.284(2)(c) the subject parcel must have been *lawfully* created prior to January 1, 1993. Petitioners argue that the county's conclusion that the subject property was lawfully created is not supported by adequate findings or substantial evidence. First, petitioners argue that the findings are inadequate because the hearings officer merely stated that he agreed with the staff's conclusions, but did not adopt staff findings or identify the basis for his conclusion that the staff's analysis is correct. In particular, petitioners argue that there is no evidence that the tax lot 3400 was legally created, because the record does not include the journal vouchers or deeds that the county relied on. Petitioners also argue that there is no evidence from the record that the three parcels to the south of the subject property were legally created from the 40-acre parcel that was conveyed by separate deed in 1976. Because there is no evidence that the three parcels were lawfully

created, petitioners contend that the county cannot conclude that the subject parcel was legally separated from the remainder of the parent parcel.

Intervenor responds that the hearings officer identified the evidence he relied upon, specifically the staff note at Record 107, and the supplemental documentation accompanying that staff note at Record 108 through 120, to reach his conclusion that the subject property was legally created. Intervenor argues that the hearings officer's findings were adequate to identify the standard that was applied and the facts that were relied upon and that the hearings officer's conclusion that the standard was satisfied naturally flows from that evidence.[4]

We agree with intervenor that the hearings officer's findings are adequate to explain why he concluded that the subject parcel was legally created. The findings identify the evidence relied upon and essentially adopt the planning department's analysis as the basis for his conclusion. While that informal approach may be potentially problematic, we believe that the findings are adequate in this case to (1) identify the relevant approval standards; (2) set out the facts relied upon; and (3) explain how the facts lead to the conclusion that the relevant approval standards are met. *Le Roux v. Malheur County*, 30 Or LUBA 268, 271 (1995).

We also agree with intervenor that the hearings officer's conclusion is supported by substantial evidence. Evidence that the subject parcel is a noncontiguous remainder of the former Faydrex, Inc. tract is sufficient to establish its separate existence. However, if that is the case, the crucial question, for the purposes of ORS 215.284(2), is *when* the subject parcel was separated from the remainder of the Faydrex, Inc. property. Thus, we turn to the findings

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[4] Intervenor also argues that petitioners waived this issue by not raising it below. *See* ORS 197.763(1); 197.835(3) (participants in a land use proceedings must raise issues that may form the basis for reversal or remand during the local proceedings or they are waived at LUBA). However, the hearings officer's decision clearly identifies the legal creation of the subject property as an issue that was raised during the local proceedings. Record 5, quoted in n 3. Therefore, petitioners did not waive their right to challenge the hearings officer's conclusion that the subject property was legally created.

and evidence that the county relied upon to find that the intervening parcels were legally created prior to January 1, 1993.

With respect to tax lot 3400, the record includes a copy of the deed that conveyed the parent parcel to Faydrex, Inc. in 1970. Record 118. The record also includes a copy of the assessor's record showing that tax lot 3400 was established as a separate tax account through JV 72-03948. Record 115. That evidence, plus the evidence that staff had previously relied on JV 72-03948 to establish that tax lot 3400 had been legally established through segregation, is sufficient to demonstrate that tax lot 3400 was legally "created" pursuant to JCLDO 15.020(1)(G).[5]

With respect to the 40 acres located to the south of the subject property, there is no dispute that the 40 acres was conveyed from Faydrex, Inc. to a third party by a deed that was signed and recorded in 1976. *See* Record 109 (copy of the 1976 deed). Nor do petitioners argue that the 1976 conveyance was not in accord with the county's zoning ordinance provisions in effect at the time. Therefore, we may assume that a 40-acre parcel was legally created in 1976 pursuant to JCLDO 15.020(1).[6] That 1976 conveyance had the effect of separating the subject property from the remainder of the Faxdrex, Inc. tract. Based on that evidence, the county could conclude, as it did, that the subject parcel was legally created in 1976 and, therefore, ORS 215.384(2)(c) is satisfied.

The first assignment of error is denied.

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[5] Under JCLDO 15.020(1)(G), "[s]egregation of a tax lot * * * for financing or security purposes" was sufficient to create a separate legal parcel in 1976. Petitioners do not argue that the segregation of tax lot 3400 was for other than "financing or security purposes."

[6] Petitioners' argument with respect to the 40-acre parcel appears to be premised on the belief that the subsequent division of that 40-acre parcel into three smaller parcels must *also* have been legal in order for the county to reach the conclusion that the subject parcel is a legal parcel. Petitioners are mistaken. The legality or illegality of the subsequent conveyance of portions of the 40-acre parcel has no bearing on the separate existence of the subject property.

SECOND ASSIGNMENT OF ERROR

ORS 215.284(2) provides, in relevant part:

> "* * * [A] single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:
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> "(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use[.]"

The hearings officer found that the criterion was satisfied, stating:

> "There is no evidence in the record that the dwelling or activities associated therewith will force a significant change in or significantly increase the cost of accepted farming practices on nearby lands. Appellant's contention that an escalation of the values of the subject property should the application be approved will have such an impact is at best conclusory and is not demonstrated by any evidence in the record." Record 5.

Petitioners argue that contrary to the hearings officer's findings, there is evidence in the record that approval of a nonfarm dwelling on the subject property will significantly increase the cost of accepted farming practices by increasing the cost of the agricultural land itself. Petitioners point to evidence in the record that the subject property was sold to intervenor for $875 per acre in 1999, and the current asking price for the property is $3,750 per acre. Petitioners argue that the difference between the purchase price and the asking price for the property is directly attributable to the increased value of the property as a building site rather than as bare agricultural land. Petitioners also contend that there are small scale agricultural activities occurring on neighboring properties and contend that the property has been used in conjunction with other properties in the vicinity for grazing. Petitioners argue that grazing will cease to be an economical activity in the area if agricultural lands such as the subject property are developed with nonfarm dwellings.

Petitioners also argue the requirement that the subject property must be permanently disqualified from special farm assessment as a condition of approval for the nonfarm

dwelling is a major disincentive to conduct any agricultural activities on the subject property because the cost of leasing or purchasing the property includes the property taxes that are assessed against the land. Petitioners explain that the subject parcel is one of the last available undeveloped parcels in the vicinity. Petitioners argue that by approving a nonfarm dwelling on the subject property, neighbors will not be able to afford to expand their agricultural activities onto the subject property. Petitioners argue that the hearings officer's findings are inadequate because they do not address petitioners' arguments or their evidence that agricultural activities in the area will be significantly diminished by the establishment of a dwelling on the subject property or address petitioners' arguments and evidence that the approval of a nonfarm dwelling will significantly increase the cost of agricultural land.

Intervenor responds that, contrary to petitioners' assertions, the establishment of a nonfarm dwelling on the subject property will not significantly increase the cost of accepted farming practices in the area; nor will it result in significant changes in those accepted practices. According to intervenor, few if any of the lands near the subject property are currently devoted to farm or forest uses or are subject to preferential farm or forest tax assessment. Intervenor contends that most of the property to the north is primarily used for residential purposes; property to the south is owned by PPL and is developed with high-voltage power lines; and property to the west is developed with a landfill and a composting facility. Intervenor also argues that *none* of the property abutting the subject property is being farmed.

Petitioner's arguments provide no basis for reversal or remand. ORS 215.284(2)(a) pertains to the increase in the cost of accepted farm and forest *practices* and the change in those practices that are occurring on nearby properties devoted to farm and forest use. Petitioners focus on the potential costs of acquiring land to conduct farm and forest practices, which is at best an indirect and speculative relationship to those practices. Accordingly, the second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

ORS 215.284(2) provides:

> "* * * [A] single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:
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> "* * * * *
>
> "(d) The dwelling will not materially alter the stability of the overall land use pattern of the area[.]"

OAR 660-033-0130(a)(D) sets out the methodology to be used to analyze the effect a nonfarm dwelling will have on the stability of the area.[7] *See Elliott v. Jackson County*, 43 Or

[7] OAR 660-033-0130(4)(a)(D) provides, in relevant part:

> "* * * In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:
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> "(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;
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> "(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;
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> "(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to

LUBA 426 (2003) (discussing the history and application of OAR 660-033-0130(a)(D) to nonfarm dwelling applications proposed to be sited in existing parcels.) The hearings officer relied on a study conducted by the planning staff to conclude that the establishment of the proposed nonfarm dwelling would not alter the stability of the land use pattern in the area, stating:

> "Evidence and argument were presented at the public hearing challenging staff's analysis and conclusions. * * * The Hearings Officer concludes that the alleged deficiencies in staff's analysis are for the most part irrelevant to staff's conclusion or are not of sufficient import to [a]ffect the validity of that conclusion. The Hearings Officer finds there is substantial evidence in the record to support staff's conclusion * * *." Record 5-6.

Petitioners argue that this finding is inadequate to respond to arguments made below that the chosen study area is not "representative of the land use pattern surrounding the subject parcel." Petitioners argue that the study area is improperly skewed to include more of the nonresource parcels to the north of the subject property and does not adequately reflect the agricultural uses that are occurring to the south. Petitioners also argue that the findings do not adequately explain why the county considered some parcels to be nonresource parcels, but then concluded that nonresource dwellings were unlikely to be sited on them. Petitioners finally argue that the study is flawed because (1) it incorrectly calculates the acreage included in the study area; (2) misidentifies the zoning on at least one parcel; (3) identifies parcels as being included in the study area and then inexplicably discounts them from the stability analysis; and (4) misidentifies ownership.

Intervenor relies on *Wolverton v. Crook County*, 39 Or LUBA 256 (2000) to argue that the hearings officer's findings and staff's analysis are adequate to explain why the study area is representative of the land use pattern in the area; why some properties were discounted; and why other properties were considered to be in resource use despite their

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> diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area[.]"

nominal status as nonresource parcels.[8] The petitioners in *Wolverton* challenged a decision that approved a nonfarm dwelling on 21 acres located within an area that included a

[8] The staff analysis states, in relevant part:

> "A study area of approximately 2200 acres has been identified. The area includes the Dry Creek drainage basin, extending one mile south and approximately two miles north of the subject parcel. A significant portion of the land in the study area, including the subject parcel, is not irrigated. Dryland meadows are available for limited grazing.
>
> "There are 52 tax lots zoned EFU in the study area. However, one of the lots is an access strip, so will not be counted in this analysis. Another lot was created to house a nonfarm dwelling. Since this lot cannot be sold or developed separately from the parent lot, it will not be counted as a separate parcel. Two other tax lots are not separate parcels so will be counted as a single parcel. The majority of the land is not receiving special assessment as farm or forest land. The lots that are assessed as farm land are at the north and south ends of the study area. One lot, immediately south of the subject parcel, is assessed as forest land.
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> "There are 11 dwellings in the study area. Two are on parcels that are receiving special assessment as farm land, so are considered to be farm dwellings. One is on a parcel receiving special assessment as forest land. One is a farm dwelling that was approved by the county in 1984, but the parcel where it is located is no longer receiving special assessment as farm land. Three of the dwellings were approved [as] nonfarm dwellings prior to 1993, and one was approved as an ownership of record dwelling after 1993. The remainder pre-date zoning and are on parcels not receiving any special assessment.
>
> "Much of the study area may not be available for development. Pacific Power and Light owns 6 parcels totaling nearly 300 acres [that] accommodate a 500 kV line and substation. Another 10 parcels with a total of nearly 354 acres are occupied or have been purchased for future expansion of the Dry Creek Landfill.
>
> "After subtracting these parcels, there are 23 lots that will be analyzed to determine their potential for dwellings that are not in conjunction with farm use. [Nineteen] of the lots contain areas of nonagricultural soils, so could potentially qualify for nonfarm dwellings. None of the remaining lots were purchased prior to January 1, 1985, precluding an opportunity to consider Ownership of Record dwellings. The entire study area is in an especially sensitive wildlife habitat area, which requires new lots to be at least 160 acres in size. None of the lots are large enough to be divided in compliance with this standard.
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> "The existing nonfarm dwellings are located in the northeast corner of the study area and immediately south of the subject parcel, plus the dwelling that is on the parcel containing the existing landfill. The potential nonfarm dwellings would be located throughout the study area. However, most of the study area is not currently in farm use, based on a lack of special assessment. Three lots in the southeast corner of the study area that could potentially qualify for nonfarm dwellings are under the same ownership as a much larger tract owned by Cross and Kaufman. The tract is used for cattle grazing. It is unlikely that the owners would sell or develop the three lots if it would have a negative impact on their farming operation. Many of the remaining lots that could potentially qualify for nonfarm dwellings are under the ownership of PacifiCorp, which presumably is preserving the land for future utility facilities and transmission lines. A 300-acre parcel in the northwest corner of the study area is currently receiving special assessment but that could potentially qualify for a nonfarm

significant number of nonfarm parcels and several large ranch parcels. The findings in *Wolverton* explained why the county believed that the chosen two-mile square study area was representative of the land use pattern in the area, and detailed the number and the general location of dwellings and resource parcels. We concluded in *Wolverton* that the findings were adequate to provide a clear picture of the land use pattern of the area, and established the basis for the county's determination that the area's special development constraints would significantly limit the number of new nonfarm dwellings. Therefore, we upheld the county's conclusion that the approval of a nonfarm dwelling in those circumstances would not alter the stability of the land use pattern in the area. *Wolverton*, 39 Or LUBA at 271.

The findings in this case are not sufficient to establish that the subject dwelling will not alter the stability of the land use pattern of the area. The findings do not explain why the study area chosen is representative of the area. Nor do the hearings officer's findings respond to issues raised by petitioners and others that challenge the assumptions included in the staff analysis. Where, as here, a party raises issues regarding compliance with an approval criterion, it is incumbent upon the local government to address those issues in the findings adopted to support the decision. *Hillcrest Vineyard v. Bd. of Comm. Douglas County*, 45 Or App 283, 293, 608 P2d 201 (1980). While the hearings officer concluded that the issues raised by petitioners did not change the ultimate result—that a nonfarm dwelling on the subject property will not alter the stability of the land use pattern in the area—the hearings officer's findings do not explain why this is so.

> dwelling received approval last year for a composting facility. So the parcel has already been targeted for a nonfarm use and would not be available to adjacent farms interested in expansion. The other lots that could potentially qualify for nonfarm dwellings are adjacent to existing nonfarm parcels, the landfill, or the Pacific Power properties. None are adjacent to commercial farms, so there will be no effect on the ability of the few farms in the vicinity to expand or continue operation. The majority of the study area is already predominantly devoted to nonfarm uses, with very little farming occurring. Approval of a dwelling on the subject parcel and on most of the other parcels that could potentially qualify will have no cumulative impact on this existing pattern." Record 183-184.

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

JCLDO 218.090(7)(C) provides:

> "[A] dwelling [may be] situated upon a lot or parcel, or portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock * * * based upon the following: * * *
>
> "(i) In determining whether a lot or parcel, or a portion of a lot or parcel, is unsuitable for farm use, terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract shall be considered.
>
> "(a) A lot or parcel is presumed to be suitable if it is composed predominantly of Class I - IV soils.
>
> "(b) A lot or parcel is not 'generally unsuitable' simply because it is too small to be farmed profitably by itself.
>
> "(c) If a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, it is not 'generally unsuitable.'
>
> "(d) Unsuitability of a lot or parcel for one farm use does not mean it is unsuitable for another farm use."

Petitioners argue that the general unsuitability determination must be based on the entire parcel and not just the portion of the property where the dwelling is proposed to be located. According to petitioners, the record shows that the subject property includes predominantly agricultural soils, is suitable for grazing, and has been grazed in conjunction with the other properties in the Faydrex, Inc. tract in the past. Petitioners contend that the hearings officer must consider the general unsuitability of the larger grazing unit (the Faydrex, Inc. tract) in its analysis of whether the portion of the subject property is generally unsuitable for agricultural use.

Petitioners also argue that, even if only the portion of the lot where the dwelling is to be located is considered in conducting the suitability analysis required by JCLDO 218.090(7)(C), the county's conclusion that that portion is generally unsuitable for

agricultural uses is not supported by substantial evidence. Petitioners concede that the soils evaluation concluded that the proposed dwelling site is not suitable for cultivation, but argue that the evaluation does not adequately explain why the existence of stones on the surface of the Class IV soils makes the site unsuitable for grazing, the primary agricultural activity in the area. Further, petitioners argue, the soil evaluation's conclusion that the proposed dwelling site is not suitable for agricultural use is based on a "commercial" agricultural standard and is not based on the site's suitability for agricultural uses in general. Finally, petitioners argue that neither the evidence nor the hearings officer's findings address arguments that petitioners made that the subject property, including the proposed dwelling site, has been used in conjunction with a larger ranching operation in the past, and there is no evidence that the property cannot be put to that use in the future.

Intervenor responds that the hearings officer did not err in considering only the areas proposed for the dwelling, rather than the entire parcel. With respect to petitioners' findings and evidentiary challenges, intervenor argues that the soils on the subject property was evaluated by a certified soils classifier, who determined that the soil is rocky, and in some places the subject property includes more than 50 percent surface rock.[9] According to

[9] Intervenor cites to a letter at Record 170-171 as the evidence the hearings officer relied upon. That letter states, in relevant part:

> "Four soils descriptions and many pit reviews were completed on the [subject property] on March 1, 2, 2002. * * * The purpose of this soil investigation was to verify the USDA-NRCS mapping of this parcel. Our goal was to confirm whether or not the entire parcel is commercial/resource farm land by USDA/DLCD definitions. * * *
>
> "NRCS soil maps show the parcel to be comprised of Carney Clay (27D) ranging in slope from 12 to 20%. This soil is resource in makeup and a member of Capability Class IVe. Field verification confirms the dominance of these * * * soils which are heavy in clay, dark in color and less than 50 [inches] to bedrock. * * * Field verification has shown the NRCS maps to be largely accurate * * *. The study area shows mostly Carney soils with a few areas of very similar resource soils. The major non-resource inclusions are areas of Carney Clay (27D) with rubbly surfaces (>50% rock on the surface). * * * Four such rubbly areas were field flagged and delineated on the attached aerial photo enlargement. * * * These areas are non-resource due to their lack of cultivation ability (due to surface rock) and are likewise not able to support forest crops due to no surface area for seedling placement." Record 170.

intervenor, the proposed building site is located on one of those rocky areas and the county required that the nonfarm dwelling be located on that rocky area.

The hearings officer found:

> "The text of [JCLDO] 218.090(7)(C) states that so long as the proposed dwelling is sited on a portion of the subject parcel which portion is itself generally unsuitable for farm purposes, the dwelling should be permitted [regardless] of whether * * * the parcel as a whole is generally unsuitable. The Hearings Officer concludes there is substantial evidence in the record that the proposed site for the dwelling, when reduced in area as is suggested by staff in the conditions of approval, is on a portion of the subject property [that] is unsuitable for farm purposes. * * * None of the factors listed in [JCLDO] 218.090(7)(C) demonstrate how the portion of the lot in question could be deemed to be suitable for farm use. * * *" Record 6.

We understand petitioners to argue that the hearings officer must consider the suitability of the *entire parcel* for agricultural uses in this case, because the subject property is a portion of the Faydrex, Inc. tract; and the Faydrex, Inc. tract is the "tract" identified in JCLDO 218.090(7)(C)(i). We also understand petitioners to contend that unless intervenor can show that the entire parcel is generally unsuitable for agricultural use in conjunction with the remainder of the Faydrex, Inc. tract, intervenor has not demonstrated that JCLDO 218.090(7)(C) has been met.

We reject that argument. Fairly read, the word "tract" as used at the end of the sentence in JCLDO 218.090(7)(C)(i) is merely shorthand for the "lot or parcel or portion of a lot or parcel" set out in the first line of that sentence.[10] The hearings officer did not err by limiting his consideration to whether the portion of the subject property where the proposed dwelling is to be located is generally unsuitable for agricultural use.

[10] We realize that JCLDO 218.090(7)(C) codifies OAR 660-033-0130(4)(c)(B), and that the administrative rule defines "tract" as "one or more contiguous lots or parcels in the same ownership." OAR 660-033-0020(10). However, reading "tract" in this context to require that the entire ownership must be evaluated to determine whether a portion of that ownership is unsuitable for agricultural use renders the phrase "portion of the lot or parcel" meaningless.

Turning to petitioners' findings and evidentiary challenges, we agree with petitioners that the findings are not adequate to explain why the hearings officer concluded that the proposed dwelling site is generally unsuitable for agricultural use, in light of the testimony and evidence that the subject property, including the proposed dwelling site, is comprised of agricultural soils, and has been used for grazing in the past. Finally, we agree with petitioners that the hearings officer's decision does not explain why he reached the conclusion that the proposed building site is not suitable for agricultural uses, including grazing, based on evidence that the soils are unsuitable for commercial cultivation.

The fourth assignment of error is sustained, in part.

The county's decision is remanded.