

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 JAMES JUST,
5 *Petitioner,*

6
7 vs.

8
9 LINN COUNTY,
10 *Respondent,*

11
12 and

13
14 F.C. SCHWINDT,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2006-045

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Linn County.

23
24 James Just, Lebanon, filed the petition for review and argued on his own behalf.

25
26 No appearance by Linn County.

27
28 David J. Hunnicutt, Tigard, filed the response brief and argued on behalf of
29 intervenor-respondent. With him on the brief was Oregonians in Action Legal Center.

30
31 BASSHAM, Board Chair; HOLSTUN, Board Member, participated in the decision.

32
33 DAVIES, Board Member, did not participate in the decision.

34
35 AFFIRMED

06/21/2006

36
37 You are entitled to judicial review of this Order. Judicial review is governed by the
38 provisions of ORS 197.850.

1

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision that amends the comprehensive plan map
4 designation of a 28.62-acre parcel from Farm/Forest Rural Residential Reserve to Non-
5 Resource, and a concurrent zone change from Farm/Forest (F/F) to Non-Resource (NR-5).

6 **MOTION TO INTERVENE**

7 F.C. Schwindt (intervenor), the applicant below, moves to intervene on the side of
8 respondent. There is no opposition to the motion, and it is allowed.

9 **MOTION TO FILE REPLY BRIEF**

10 Petitioner seeks to file a reply brief to address a waiver issue raised in the response
11 brief. There is no opposition to the motion, and it is allowed.

12 **FACTS**

13 The subject property is a 28.62-acre parcel located approximately one-half mile east
14 of the City of Lebanon. The property is developed with a single family dwelling, and lies
15 within a peripheral big game habitat area. Soils on the property consist of Witzel very
16 cobbly loam, 3 to 30 percent slopes (104E), and Witzel very cobbly loam, 30 to 70 percent
17 slopes (104G). The National Resource Conservation Service (NRCS) soil survey rates these
18 soils with an agricultural capability class of VIs and a forest productivity for Douglas fir of
19 106 cubic feet per acre per year (cf/ac/yr), which falls within site class 4.¹ The NRCS soil

¹ OAR 660-006-0005(2) defines the term “cubic foot per acre per year” to mean:

* * * the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment * * *.”

Site class 4 apparently represents a potential yield, at mean annual increment, of 85 to 120 cf/ac/yr. Record 258. Site class 1 represents the highest potential yield, 225 cf/ac/yr or higher, while site class 7 represents the lowest, less than 20 cf/ac/yr. *Id.*

1 survey also indicates that the Witzel soils have a 50 year site index of 90.² At present two
2 acres of the property are fully timbered; the remainder consists of scattered deciduous and
3 Douglas fir trees, open grassy areas and rock outcrops. The property was logged
4 approximately 50 years ago, as evidenced by widely scattered stumps. Five acres of the
5 property currently receive property tax deferral based on forest use.

6 In 2002 and again in 2003 LUBA remanded county decisions approving plan and
7 zoning amendments based on committed exceptions to Statewide Planning Goals 3
8 (Agricultural Land) and 4 (Forest Land). On October 20, 2004, intervenor-respondent
9 (intervenor) filed an application to amend the plan designation to Nonresource and rezone
10 the property to NR-5, based on a determination that the subject property is not resource land
11 protected by Goals 3 or 4. The planning commission recommended approval, and on
12 February 22, 2006, the board of county commissioners voted to approve the application.
13 This appeal followed.

14 **FIRST ASSIGNMENT OF ERROR**

15 Petitioner argues that the county misconstrued the applicable law, and made
16 inadequate findings not supported by substantial evidence, in determining that the subject
17 property is not “lands which are suitable for commercial forest uses” and therefore not forest
18 lands protected by Goal 4.³

19 **A. NRCS productivity ratings**

20 Petitioner first contends that the county erred in disregarding NRCS data in
21 determining that the property is not “suitable for commercial forest uses.”

22 The Goal 4 definition of “forest lands” states:

² A “site index,” we understand, is a different measurement of forest productivity, indicating in the present case that the two soils have the potential to produce Douglas fir that in 50 years would reach 90 feet in height.

³ Petitioner does not challenge the county’s finding that the subject property is not agricultural land protected by Goal 3.

1 “Forest lands are those lands acknowledged as forest lands as of the date of
2 adoption of this goal amendment. Where a plan is not acknowledged or a plan
3 amendment involving forest lands is proposed, forest lands shall include lands
4 which are suitable for commercial forest uses including adjacent or nearby
5 lands which are necessary to permit forest operations or practices and other
6 forested lands that maintain soil, air, water and fish and wildlife resources.”

7 Neither Goal 4 nor the Goal 4 rule set forth a precise methodology for determining whether
8 land is “suitable for commercial forest uses.” *Potts v. Clackamas County*, 42 Or LUBA 1, 5,
9 *aff’d* 183 Or App 145, 52 P3d 449 (2002). OAR 660-006-0010 requires local governments
10 to inventory “forest lands” by a mapping of forest site class, or if site class information is
11 unavailable, an equivalent method of determining forest site suitability. LUBA has held that
12 Goal 4 requires a similar approach in determining whether land is “suitable for commercial
13 forest uses” under the Goal 4 definition. *Wetherell v. Douglas County*, 50 Or LUBA 167,
14 204 (2005), *rev’d and rem’d on other grounds*, 204 Or App 732, ___ P3d ___ (2006). That is,
15 such determinations must be based on empirical measurements of forest productivity, and
16 local governments cannot assume from the lack of published data for a particular soil that the
17 soil has no forest productivity. *Id.*

18 Here, as noted, the NRCS Soil Survey indicates that the two soils present on the
19 property have a forest productivity potential for Douglas fir of 106 cf/ac/yr, site class 4, with
20 a 50 year site index of 90. Intervenor’s consultant conducted a study of the property, with
21 two supplemental reports, that included samples of trees in the few areas of the parcel where
22 trees suitable for sampling are found.⁴ Notwithstanding the NRCS soils ratings, the study

⁴ The study includes the following descriptions of the subject property and the methods used:

“The subject parcel is located approximately one mile east of Lebanon, Oregon and lies on a rocky ridgetop. The vegetative cover is dominated by dry site brush species such as grasses, poison oak and scrub oak. Widely scattered Douglas fir are also present. The Douglas fir occupies less than 5 percent of the total land area and is of poor quality from an industrial timberland owners’ standpoint.

“The poorly developed soils are thin and rocky with noticeable rock outcroppings throughout. Aspect is generally southerly with gentle slopes ranging from 5 to 20 percent. The site was logged approximately 50 years ago and is evidenced by widely scattered stumps. There is no

1 concluded that only two acres of the property actually reach the potential productivity
2 indicated by the NRCS ratings, and that the capability of the remainder of the property to
3 produce commercial timber is “nearly nil.”⁵ Based on that report and supplements, the
4 county concluded that the subject property is not “suitable for commercial forestry.”

5 Petitioner notes that OAR 660-006-0010 requires local governments to inventory
6 forest lands subject to Goal 4 using a forest site class system or an equivalent method of

physical evidence that well stocked, or even moderately stocked timber stands were present prior to logging.

“This ridgetop area is subject to high winds as evidenced by highly defective trees. Old top break, sweep and crook are evident in nearly every individual. Acceptable site trees, sampled to estimate productivity, were hard to locate due to pervasive form breaks.

“* * * * *

“Certain trees were cored to determine age. Total heights were also measured. The data was then correlated to existing site tables and averaged to determine average productive capacity of the site. A total of 6 trees were sampled over each quadrant of the parcel. The northerly portion of the parcel was not sampled thoroughly due to the absence of trees. There was difficulty in locating suitable dominant trees for measuring site capacity. This was due to the lack of viable growing sites. Most of the lot lies on land incapable of supporting any Douglas fir. * * *” Record 188-89.

The February 7, 2005 supplemental report further described the methods used:

“All trees that met the sampling criteria were measured. In areas where there were no trees, or no acceptable trees, the soil depth and surrounding vegetation were examined. After observing xeric species [plants that require little moisture] and noting the preponderance of solid rock, these areas were determined to be non-commercial forestland, incapable of producing viable timber stands. Further examination of what little soil was in these non-stocked areas would be unnecessary and duplicative. There are similar conditions on adjacent property to the North, East and South, however these areas either contained no timber or no trees meeting site tree criteria. The property to the West of the subject contained acceptable site trees, however this area is clearly more productive than the subject.” Record 59.

⁵ The January 24, 2005 supplement to the consultant’s study states, in relevant part:

“The subject parcel falls below the Goal 4 definition of forestland by not being ‘suitable for commercial forest uses.’ This is due to the lack of viable growing sites. A large percentage of the lot is incapable of supporting Douglas fir or any other commercial species. This is because of the preponderance of solid rock and areas of extremely thin, rocky soils. All but approximately 2 acres are incapable of producing viable stands of commercial timber. As stated in the results of my site survey, the average 50 year site index was determined to be 95. This does not represent the average site index of the entire parcel because most of the subject [property] does not contain any trees, and therefore could not be sampled. * * * I therefore conclude that all but approximately 2 acres of the subject’s acres contain a productive capacity of nearly nil with regard to viable commercial timber stands. * * *” Record 95.

1 determining forest productivity.⁶ Petitioner argues that where NRCS data is available local
2 governments “must rely on that information and may not substitute other information when
3 conducting an inventory of forest land.” Petition for Review 7. We understand petitioner to
4 argue that in determining whether land that has been inventoried as forest land using NRCS
5 data is indeed “forest land” under the Goal 4 definition, the county must treat NRCS data as
6 conclusive and cannot use other means of determining forest suitability.

7 Intervenor responds that, as the study explains, the NRCS ratings represent the “high-
8 end” potential for the rated soils as found in the county, based on a relatively low-intensity
9 survey, which leaves open the possibility that the actual soils and conditions on a particular
10 parcel have less potential. We agree with intervenor that, where an empirical study
11 conducted according to any applicable Oregon Department of Forestry (ODF) standards
12 determines that the NRCS productivity figures for given soils do not accurately reflect the
13 actual productivity of the soils on a particular parcel, a local government may choose to rely
14 on that study rather than the NRCS ratings to determine the productivity of the parcel and
15 hence whether it is suitable for commercial forest uses under Goal 4. NRCS forest
16 productivity ratings will rarely, if ever, be conclusive in the sense that it is legally impossible
17 for a landowner to attempt to demonstrate that the NRCS ratings or soil types as applied to a
18 particular parcel are inaccurate.

19 **B. Productivity Limitations Inherent in NRCS Ratings**

20 Petitioner next contends that many of the factors the report cites as an explanation for
21 the Witzel soils have produced no commercial stands of timber on most of the property—thin
22 soils, southern exposure, rock outcrops, etc.—are nothing more than the recognized

⁶ OAR 660-010-0010 provides, in relevant part:

“Governing bodies shall include an inventory of ‘forest lands’ as defined by Goal 4 in the comprehensive plan. * * * Outside urban growth boundaries, this inventory shall include a mapping of forest site class. If site information is not available then an equivalent method of determining forest land suitability must be used. * * *”

1 characteristics and limitations of the Witzel soil units. According to petitioners, these
2 considerations are already factored into the potential productivity ratings reported in the
3 NRCS Soil Survey. However, as explained above, there is undisputed expert testimony that
4 the NRCS productivity ratings for the Witzel soils are “high-end” estimates. That the NRCS
5 ratings reflect certain limitations common to a soil type across the county does not mean that
6 a particular parcel may not exhibit more severe limitations than reflected in the ratings.

7 **C. Higher Intensity Soil Survey**

8 Petitioner next cites to a 1998 ODF technical bulletin in the record indicating that,
9 where no trees are available for site index calculations, ODF requires a “higher intensity soil
10 survey” by a “soil scientist” to determine the productivity of the soil. As noted, intervenor’s
11 consultant had difficulty finding suitable trees on most of the parcel to sample. Petitioner
12 contends in that circumstance that ODF requires a soil scientist to conduct a higher intensity
13 soil survey on the property, and that no such survey was performed.

14 The status and applicability of the ODF publication cited in the record is not clear to
15 us, but it seems to set out ODF standards for determining forest productivity in
16 circumstances where, for some reason, the NRCS soil survey is not relied upon. *See* Record
17 74 (“[b]ecause the [NRCS] soil survey is not site specific information, the [DOF] has agreed
18 to approve methods that would allow a land owner to use site specific information to
19 determine the productivity of the land when applying for a dwelling or other land use
20 decision”). An overview of the process states that “[t]he landowner must have an
21 independent, knowledgeable person, like a consulting forester, measure the trees on the
22 property and calculate the cubic foot site class using the [ODF] approved methods.” *Id.* The
23 publication goes on to state:

24 “If the parcel is a forest site and no trees are available for site index
25 calculations, or if the site index cannot be determined accurately from the
26 existing timber in the area, then soil survey methodology will be required to
27 accurately assess the site productivity. To map the area and provide site
28 specific data that is more accurate than the USDA Soil Survey will require the

1 landowner to employ a soil scientist to do a higher intensity soil survey. The
2 qualifications and procedures for conducting such a survey are contained in
3 OAR 603-080-0040(3). This survey must provide detailed information on the
4 soil types represented on the property.” Record 75.

5 Although it is not entirely clear, it appears to us that the result of a “higher intensity
6 soil survey” required by the above language is to “provide detailed information on the soil
7 types represented on the property.” In other words, the requirement for a soil survey applies
8 to circumstances where there is concern that the NRCS soil maps are inaccurate or too
9 general, and therefore a “higher intensity soil survey” is necessary to determine the actual
10 soil types on the property, under procedures set out in OAR 603-080-0040(3). OAR 603-
11 080-0040 is part of a Department of Agriculture rule that implements ORS 215.710(5)(b),
12 which allows applicants for dwellings on high-value farmland to demonstrate that the NRCS
13 soil class, soil rating or other soil designation should be changed. Judging from the criteria
14 for an acceptable soil report listed under OAR 603-080-0040(3), the purpose and result of a
15 “higher intensity soil survey” is to identify more accurately and in more detail, as compared
16 to the low-intensity NRCS survey, the exact composition of the soil types on the property.

17 In the present case, the consultant’s study affirms that the subject property is
18 composed of the two Witzel soils indicated in the NRCS soil maps. Petitioner cites to no
19 countervailing indication that the NRCS soil maps are incorrect. Intervenor’s consultant
20 attempts to explain why those admitted soils have not in fact produced timber at anything
21 close to their potential rating. Petitioner does not explain why a higher intensity soil survey
22 would shed any light on that question. Accordingly, petitioner has not demonstrated that a
23 higher intensity soil survey is necessary in order to determine whether the subject property is
24 “suitable for commercial forest uses” under the Goal 4 definition. The fact that no higher
25 intensity soil survey was conducted by a soil scientist under OAR 603-080-0040(3) does not
26 detract from the reliability of the consultant’s timber productivity study.

1 **D. Qualitative Analysis**

2 Petitioner also argues that the scarcity of available trees to sample over most of the
3 parcel is not evidence that the potential productivity of the soils in those areas is “nearly nil.”
4 Without some objective data, petitioner argues, the consultant’s conclusion based on the lack
5 of trees to sample does not constitute substantial evidence, and is merely “qualitative” rather
6 than quantitative. *See Wetherell v. Douglas County*, 50 Or LUBA 167, 200 (2005)
7 (questioning whether a purely “qualitative” analysis of timber productivity is consistent with
8 Goal 4).

9 Intervenor responds that in *Wetherell* the forestry consultant assumed from the *lack* of
10 NRCS data that soils on the property had zero timber productivity, and LUBA held that such
11 an approach was inconsistent with Goal 4. Here, intervenor argues, the consultant did not
12 assume zero productivity from the lack of published data, but instead attempted to evaluate
13 productivity based on actual site conditions and tree samples using empirical methods
14 consistent with ODF standards. According to intervenor, the consultant conducted the
15 appropriate measurements of suitable trees, and calculated the timber productivity in site
16 index and cf/ac/yr for all areas of the property, estimating that the average productivity of the
17 parcel as a whole is only seven cf/ac/yr. Intervenor contends that that quantitative approach
18 is consistent with ODF standards and Goal 4.

19 As intervenor notes, *Wetherell* involved a circumstance where no NRCS timber
20 productivity data were available for the soils on the property, the consultant and local
21 government assumed that no data translated to zero productivity, and little empirical effort
22 was made to evaluate or quantify the actual timber productivity of the parcel. Here, no such
23 assumptions were made, and the consultant attempted to evaluate the actual productivity of
24 the subject property, using methods that generated quantitative site index and cf/ac/yr data
25 for the parcel. Although petitioner clearly disagrees with the way the data was generated and
26 the results of the study, we disagree with petitioner that the study was “qualitative” simply

1 because the relative scarcity of trees over most of the property made it difficult to gather
2 data.⁷

3 **E. Ponderosa Pine**

4 During the proceedings below, petitioner argued that Ponderosa pine is a commercial
5 “forest tree species” as defined under ORS 527.620(6), that is, “any tree species capable of
6 producing logs, fiber or other wood material suitable for the production of lumber, sheeting,
7 pulp, firewood or other commercial forest products.” Petitioner further argued that
8 Ponderosa pine is a hardier species than Douglas fir, and that the property might be
9 commercially suitable for producing Ponderosa pine, even if it is not commercially suitable
10 for producing Douglas fir.

11 Intervenor’s consultant disagreed, finding it doubtful that Ponderosa pine could be
12 established on the subject property even under intensive management.⁸ Even if it could be

⁷ Petitioner cites to no evidence in the record indicating that the relative scarcity of trees over most of the parcel is related to any cause other than the productivity of the soils. For example, petitioner does not argue that timber propagation was suppressed over the 50-year period since logging last occurred on the property by grazing or other non-forest uses.

⁸ The forestry consultant’s letters state:

“[Petitioner] suggests planting Ponderosa pine as a hardier substitute for Douglas fir. Ponderosa pine is not a viable commercial timber species in Northwest Oregon. Prior to the virtual collapse of Oregon’s plywood industry, the occasional pine was bought by mills at a slight profit to the landowner as peeler core. Since that time, higher quality core material is abundant and mills are reluctant to purchase any pine, unless it is part of a sale containing high volumes of better commercial species such as Douglas fir.

“The Willamette Valley variety of Ponderosa pine is ‘scattered’ in our area and seldom produces logs of sawlog quality due to spiral grain and other defects. Pulp log prices are below production cost levels and are unlikely to rise due to the worldwide nature of the pulp market. The nearest mills where pine logs could be profitably sold are in Southern and Eastern Oregon. It is unprofitable to ship low quality logs such a distance.” Record 96.

“I have demonstrated in my previous testimony that Ponderosa pine would be uneconomical to grow on the subject [property] (if it could even be established through intensive management, which I doubt). [Petitioner] states that pine is being planted in its native range in our area and eventually there will be a market in these logs locally. This is speculation with no supporting evidence. * * * The faltering pine market is centered in Southern Oregon and Eastern Oregon—far from our local area. These markets are struggling from competitive pine producers in Canada and the Southern U.S. It is highly unlikely that the pine market will

1 established, the consultant stated that pine grown in the Willamette Valley “seldom produces
2 logs of sawlog quality due to spiral grain and other defects” and that there is in fact no
3 market for pine anywhere in the valley, with the closest mills located in Southern and Eastern
4 Oregon, an uneconomical distance to transport low-quality logs. The county concluded that
5 the consultant successfully rebutted any claim that Ponderosa pine could be commercially
6 grown on the subject property.

7 Petitioner argues that the consultant’s testimony boils down to a claim that growing
8 Ponderosa pine would be insufficiently profitable, and fails to establish that pine could not be
9 grown and harvested to produce “logs, fiber or other wood material suitable for the
10 production of lumber, sheeting, pulp, firewood or other commercial forest products.”
11 According to petitioner, that there is no local market for pine due to depressed world market
12 conditions does not mean that land capable of growing pine for commercial sale is not “forest
13 land” under Goal 4.

14 Petitioner’s speculation that the property is capable of growing Ponderosa pine is just
15 that, speculation. The only expert testimony in the record expresses doubt that Ponderosa
16 pine can be established on the subject property even with intensive management techniques.
17 Absent any countervailing evidence on that point, the consultant’s testimony is substantial
18 evidence supporting the county’s conclusion that the subject property cannot produce
19 Ponderosa pine. We therefore need not address petitioner’s further arguments based on the
20 premise that the property can produce Ponderosa pine.

21 **F. Commercial Forest Uses**

22 Petitioner argues:

23 “[I]nsofar as the county’s conclusion rests upon evidence that forest
24 management may not be ‘cost-effective,’ the county’s decision improperly
25 interprets the word ‘commercial’ in the Goal 4 definition of forest land as

recover in our area, especially considering it is a secondary commercial species at best. Timber managers are unwilling to risk future revenue on pine. Pine is not ‘marketable in the foreseeable future.’” Record 61.

1 'land suitable for commercial forests uses' to mean 'profitable.' *DLCD v.*
2 *Coos County*, 26 Or LUBA 300, 314 (1993)." Petition for Review 9.

3 Petitioner does not cite to any specific findings or interpretation in the challenged
4 decision, and we are cited to nothing in the findings that refer to profitability. It is not clear
5 to us that the county made any interpretation at all of the term "commercial" in the Goal 4
6 definition. It may be that petitioner is reiterating his argument that the county erred in
7 relying on a supplement to the consultant's report that discusses the economics of producing
8 and selling Ponderosa pine in the Willamette Valley. We held above that the consultant's
9 primary conclusion that the property cannot produce Ponderosa pine at all is substantial
10 evidence and a sufficient basis to reject petitioner's contentions regarding Ponderosa pine.
11 We therefore need not address challenges to the consultant's alternative conclusion based on
12 the economics of growing and selling Ponderosa pine in the Willamette Valley.

13 The first assignment of error is denied.

14 **SECOND ASSIGNMENT OF ERROR**

15 The Goal 4 definition of forest lands includes "other forested lands that maintain soil,
16 air, water and fish and wildlife resources." The county concluded, essentially, that because
17 the majority of the property is not forested and has no streams, the property is not "other
18 forested lands" that maintain the listed resources.⁹

⁹ The county's findings state, in relevant part:

"The Board also finds that the land is not 'other forested lands that maintain soil, air, water and fish and wildlife resources.' This finding is adequately supported by the applicant's testimony and the overall record. Of primary significance is the fact that the property is not 'forest lands.' All but two acres of the property is nearly bare with thin rocky soils, dry grasses, and few shrubs. The lack of consistent tree cover limits cover for wildlife. No streams or water bodies occur on the property. * * * Any minimal values that may exist for maintaining soil, air, water and fish and wildlife resources are likely to continue on the property, given the low residential density allowed by this application (five acre minimum size parcels); and the physical orientation and access orientation of this site towards existing rural residential exception area to the east, and away from the resource lands to the west." Record 43.

1 As noted, the property lies within a “peripheral” big game management area.
2 Petitioner argues that the property therefore must have some value as wildlife habitat.¹⁰
3 According to petitioner, if the property serves to maintain wildlife resources, even
4 minimally, the property is “forest land” protected by Goal 4. Petitioner also disputes that the
5 county’s finding that the subject property is not “forest lands” because most of the subject
6 property lacks trees. Petitioner cites to 1963 and 1987 aerial photographs he submitted into
7 the record, and argues that the photographs appear to show significant tree coverage on the
8 subject property.

9 Intervenor responds that his forestry consultant, who unlike petitioner is qualified in
10 photogrammetry, reviewed the aerial photographs that petitioner submitted and opined that
11 due to their poor quality it is impossible to tell whether the property is covered with trees or
12 bushes or nothing at all. Even if enough trees remain on the property to render the property
13 “forested land,” intervenor argues, the mere presence of trees or other resources on the
14 property that maintain the listed resources is not sufficient to constitute “other forested lands
15 that maintain soil, air, water and fish and wildlife resources.” *See Doob v. Josephine County*,
16 48 Or LUBA 227, 243 (mere presence of trees on a parcel is not sufficient to make land
17 “other forested land” within the meaning of Goal 4). Unless there is reason to believe that
18 the property must remain in forest zoning in order to maintain soil, air, water and fish and
19 wildlife habitat resources, forested land is not “other forested land” for purposes of Goal 4.
20 *Id.* Here, the county adopted findings that whatever wildlife habitat value was present on the
21 property would not be diminished by the five-acre residential development allowed in the
22 NR-5 zone.

¹⁰ The petition for review includes arguments that the county misconstrued the code provisions governing the peripheral big game habitat management area. At oral argument, however, petitioner withdrew those arguments.

1 Substantial evidence in the record supports the county’s finding that only scattered
2 trees exist on 26 acres of the 28-acre parcel. We agree with the county and intervenor that a
3 parcel consisting almost entirely of scattered trees interspersed with brush and open areas is
4 not “other forested land” within the meaning of the Goal 4 definition. Even if the parcel
5 were covered or capable of being covered more extensively with trees, we further agree with
6 intervenor that the mere presence of trees is not sufficient to establish that forested lands are
7 lands that “maintain soil, air, water and fish and wildlife resources.” The county adopted
8 findings, supported by substantial evidence, that forest zoning is not necessary to maintain
9 whatever wildlife habitat value exists on the property. Petitioner has not demonstrated that
10 the county erred in so concluding.

11 The second assignment of error is denied.

12 The county’s decision is affirmed.