

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 SHELLEY WETHERELL,
5 *Petitioner,*

6
7 vs.

8
9 DOUGLAS COUNTY,
10 *Respondent,*

11 and

12
13
14 TIMOTHY FOLEY and MERYLUZ FOLEY
15 *Intervenors-Respondents.*

16
17 LUBA No. 2010-052

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Douglas County.

23
24 Shelley Wetherell, Umpqua, filed the petition for review and argued on her own
25 behalf.

26
27 No appearance by Douglas County.

28
29 Timothy Foley and Meryluz Foley filed a response brief on their own behalf.
30 Timothy Foley argued on his own behalf.

31
32 BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board Member,
33 participated in the decision.

34
35 REMANDED

09/16/2010

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

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NATURE OF THE DECISION

Petitioner appeals a decision determining that a 76.21-acre parcel is non-resource land and approving comprehensive plan map and zoning map amendments to allow five-acre rural residential development.

FACTS

This is the third time the county has issued a decision determining that the subject property is not subject to Statewide Planning Goal 3 (Agricultural Land) or Goal 4 (Forest Lands) because it is neither agricultural land nor forest land. In *Wetherell v. Douglas County (Foley)*, 52 Or LUBA 677 (2006) (*Foley I*), we remanded the county’s initial decision because the findings and evidence failed to demonstrate that the subject property is not “suitable for farm use” and thus not “agricultural land” as defined at OAR 660-033-0020(1)(a)(B).¹ In particular, we remanded because the county’s findings failed to address whether the subject property is suitable for grazing, and did not explain why the property cannot be used for grazing similar to adjacent properties. We also remanded for the county to consider whether the subject property is suitable for commercial forestry and therefore “forest land” subject to Goal 4.²

¹ Because of the number of appeals similarly captioned *Wetherell v. Douglas County*, in this opinion we will adopt a citation convention similar to the one adopted by the Court of Appeals with the many decisions captioned *1000 Friends of Oregon v. LCDC*, by using the property owner as the short cite. We will use roman numerals only to distinguish between different decisions in the same lineage of appeals as the present appeal.

² The basic facts were set out in our initial decision:

“The subject property is a 76.21-acre parcel located northwest of Roseburg. The soils on the property have agricultural ratings between class III and class VI. Eighty percent of the soils do not have a capability class rating between I and IV. The property contains a dwelling, garage, and shop. The property has been used for grazing and minimal grape growing in the past. There is no merchantable timber currently on the property. Lands to the south and southeast are primarily zoned rural residential and are generally in residential use. Lands to the west, north, and northeast are zoned farm forest and farm grazing. Lands to the west and north are in farm use as pastureland.” *Foley I*, 52 Or LUBA at 678.

1 On remand, the county accepted new evidence, adopted new findings, and again
2 approved the application. Petitioner appealed, and LUBA again remanded. *Wetherell v.*
3 *Douglas County (Foley)*, 54 Or LUBA 678 (2007) (*Foley II*). With respect to Goal 3, we
4 concluded that the decision was not supported by substantial evidence, and further that the
5 county appeared to erroneously conclude that land suitable for seasonal grazing as opposed
6 to year-round grazing is, without more, not suitable for farm use under OAR 660-033-
7 0020(1)(a)(B). With respect to Goal 4, we concluded that intervenors’ experts failed to
8 assess the property’s capacity to produce timber in the manner required by administrative
9 rules implementing Goal 4.

10 After the second remand, intervenors-respondents (intervenors) submitted new
11 evidence from agricultural and forestry consultants, and the county adopted new findings
12 approving the application. This appeal followed.

13 **FIRST ASSIGNMENT OF ERROR³**

14 OAR 660-033-0020(1)(a) defines “agricultural land” for purposes of Goal 3 to
15 include:

16 “(A) Lands classified by the U.S. Natural Resources Conservation Service
17 (NRCS) as predominantly Class I-IV soils in Western Oregon * * *;

18 “(B) Land in other soil classes that is suitable for farm use as defined in
19 ORS 215.203(2)(a), taking into consideration soil fertility; suitability
20 for grazing; climatic conditions; existing and future availability of
21 water for farm irrigation purposes; existing land use patterns;
22 technological and energy inputs required; and accepted farming
23 practices; * * *”

24 The predominant soils on the subject property are Class V-VI, and therefore the subject
25 property does not qualify as agricultural land under OAR 660-033-0020(1)(a)(A). The
26 “suitable for farm use” test in OAR 660-033-0020(1)(a)(B) refers to the definition of “farm

³ The petition for review actually has only one assignment of error, with two nominal sub-assignments of error, one based on Goal 3 and the second on Goal 4. Because the two sub-assignments raise issues that are completely independent of each other, we treat them as separate assignments of error.

1 use” at ORS 215.203(2)(a), which in relevant part means “the current employment of land
2 for the primary purpose of obtaining a profit in money” by engaging in a number of listed
3 agricultural pursuits, including the “feeding, breeding, management and sale of, or the
4 produce of, livestock.” For purposes of determining whether land is agricultural land under
5 OAR 660-033-0020(1)(a)(B), a factor that a local government may consider in addition to
6 the seven factors listed in the rule is whether a reasonable farmer would be motivated to put
7 the land to agricultural use, including grazing, for the primary purpose of obtaining a profit
8 in money. *See Wetherell v. Douglas County (Great American Properties)*, 342 Or 666, 160
9 P3d 614 (2007) (invalidating an administrative rule that prohibited consideration of
10 profitability). *See also Wetherell v. Douglas County (Garden Valley Estates)*, 60 Or LUBA
11 131, 137-147 (2009), *aff’d* 235 Or App 246, 230 P3d 976 (2010) (describing limitations on
12 the analysis of profitability).

13 In addition, as discussed below, OAR 660-033-0030(3) requires that “nearby or
14 adjacent land, regardless of ownership, shall be examined” in determining whether land is
15 “suitable for farm use” under OAR 660-033-0020(1)(a)(B). In *Foley II*, the Goal 3 issue was
16 effectively narrowed down to whether the subject property is suitable for grazing, including
17 seasonal grazing, similar to adjacent properties with similar soils and characteristics which
18 currently support grazing operations.⁴

⁴ We stated in *Foley II*:

“We agree with petitioner that the record does not support the county’s conclusion that the subject property is not suitable for grazing. The subject property has been grazed in the past, and is located between two similarly sized parcels with the same soils and apparently similar conditions that are currently used for seasonal grazing. For all the record establishes, the same ‘management limitations’ that apply to the two major soil units on the subject property also apply to the adjacent properties. The county and the soil scientist concluded that seasonal livestock grazing on property subject to those ‘management limitations’ is an ‘unreasonable agricultural practice.’ Record 9, 127. However, as petitioner notes, the applicant’s soil scientist does not purport to be an agricultural expert or an expert on what level of grazing would or would not be ‘reasonable.’ There is no substantial evidence cited to us indicating that the subject property is not suitable for seasonal grazing consistent with past use and adjoining livestock operations, taking into account any relevant ‘management limitations’ together with reasonable measures to overcome those limitations. The county

1 **A. Suitable for Grazing**

2 On remand, intervenors submitted a report by an agricultural economist that
3 evaluated the economic feasibility of a hypothetical year-round cow/calf grazing operation
4 on the subject property, and concluded that, after taking into account a number of expenses,
5 it would operate at a loss. In a supplemental letter, the agricultural economist stated briefly
6 that “[i]f year around grazing is not economically feasible, then seasonal grazing which only
7 increases costs * * * would not be considered viable. Therefore, it was not considered in the
8 analysis.” Record 217. The county concluded based on those reports that no reasonable
9 farmer would be motivated to employ the subject property for grazing, year-round or
10 seasonal, with the hope of making a profit in money.

11 Petitioner argues that the county’s findings regarding seasonal grazing are inadequate
12 and not supported by the record. Petitioner cites to evidence that seasonal grazing is a
13 common pattern of grazing operations on properties in the area that are zoned for farm use,
14 including the two adjoining parcels to the north and west. Indeed, petitioner cites to
15 evidence that at the time of the county hearing the subject property was leased for seasonal
16 cattle grazing. Record 234. Intervenors do not dispute that the subject property has recently
17 been, and perhaps still is, leased for seasonal cattle grazing. Response Brief 6. Given this
18 history of seasonal grazing of the subject property and surrounding agricultural lands, we
19 agree with petitioner that the focus of the agricultural economist’s study only on the
20 feasibility of a hypothetical year-round grazing operation is incomplete. Other than the
21 statement quoted above, the economist provides no analysis of a seasonal grazing operation,
22 consistent with historic use of the property and surrounding grazing lands. Petitioner argues
23 that there is no evidence supporting the economist’s claim that seasonal grazing would only

and soil scientist appear to believe as a general proposition that property suitable only for seasonal as opposed to year-round grazing is not ‘suitab[le] for grazing’ as that phrase is used in the OAR 660-033-0020(1)(a)(B) definition of agricultural land. If that is the county’s view, they cite no legal authority for that view and we are aware of no such legal authority.” 54 Or LUBA at 682-83.

1 “increase costs” compared to a year-round grazing operation, and intervenors do not cite us
2 to any evidence supporting that claim. According to petitioner, the only specific evidence in
3 the record concerning seasonal grazing of the subject property indicates that a seasonal
4 feeder cow/calf operation would be profitable. Record 230-31 (hypothetical budgets
5 submitted by petitioner).

6 Relatedly, petitioner argues that sheep ranching is common in the area, and that she
7 submitted a hypothetical budget for a sheep operation on the subject property showing a
8 profitable operation. Record 232. According to petitioner, the county failed to adopt
9 findings addressing whether the subject property is suitable for grazing under such a sheep
10 operation. Intervenors argue that the issue of a sheep operation was addressed in testimony
11 during the hearings below. However, intervenors cite to no place in the record where the
12 county commissioners adopted any conclusions regarding a sheep operation.

13 We agree with petitioner that the county’s findings regarding whether the subject
14 property is “suitable for grazing” are inadequate and not supported by substantial evidence.
15 The evidence cited to us in the record indicates that seasonal rather than year-round cattle
16 grazing is a common grazing pattern in the area, and the subject property and surrounding
17 lands have been, and continue to be, used for seasonal grazing. We are cited to no legal
18 authority, or evidence, that land suitable for seasonal grazing consistent with agricultural
19 practices in the area is not “other lands” suitable for grazing for purposes of OAR 660-033-
20 0020(1)(a)(B) simply because it may not suitable for a year-round grazing operation. We are
21 also cited to no evidence supporting the agricultural economist’s unexplained statement that
22 seasonal grazing would only “increase costs” compared to year-round grazing. Finally, we
23 agree with petitioner that the issue of whether the subject property is suitable for grazing
24 under a sheep operation was raised below with specificity, and that the county erred in failing
25 to adopt findings addressing that issue.

1 **B. Consideration of Adjacent and Nearby Lands**

2 OAR 660-033-0030(2) provides in relevant part that

3 “[W]hether land is ‘suitable for farm use’ requires an inquiry into factors
4 beyond the mere identification of scientific soil classifications. The factors
5 are listed in the definition of agricultural land set forth at OAR 660-033-
6 0020(1)(a)(B). This inquiry requires the consideration of conditions existing
7 outside the lot or parcel being inventoried. * * *”

8 Further, as noted, OAR 660-033-0030(3) provides:

9 “Goal 3 attaches no significance to the ownership of a lot or parcel when
10 determining whether it is agricultural land. Nearby or adjacent land,
11 regardless of ownership, shall be examined to the extent that a lot or parcel is
12 either ‘suitable for farm use’ or ‘necessary to permit farm practices to be
13 undertaken on adjacent or nearby lands’ outside the lot or parcel.”

14 We have held that OAR 660-033-0030(2) and (3) require that a county consider whether the
15 subject property can be used in conjunction with adjoining or nearby agricultural or grazing
16 operations. *Wetherell v. Douglas County (Garden Valley Estates)*, 58 Or LUBA 101, 116
17 (2008). If so, then the property may be “suitable for farm use,” even if the property cannot
18 support a stand-alone agricultural or grazing operation.

19 In the present case, petitioner does not argue that the subject property can be used in
20 conjunction with nearby grazing operations, but instead petitioner notes that two adjacent or
21 nearby properties with similar soils and slopes are used for seasonal grazing operations, and
22 argues:

23 “The County has not made findings explaining why the subject property
24 cannot be used for grazing as are adjacent and nearby properties that are
25 similar in soils and aspects. The County’s findings do not explain what is
26 different or extraordinary about the subject property which makes it different
27 from the adjacent and nearby properties and unsuitable for farm use.” Petition
28 for Review 10.

29 The subject property is bordered on three sides by parcels with soils and slopes
30 similar to the subject property, that are also zoned for agricultural use. The record indicates
31 that two adjoining parcels, a 379-acre parcel to the north and an 81.58-acre parcel to the
32 west, are currently used for seasonal grazing operations. The county did not consider

1 evidence regarding those two parcels, but instead considered a letter from the owners of an
2 82.5-acre parcel adjoining to the east, the Sullivans, and a letter from the owner of
3 unidentified property to the west, Avery. The Sullivan letter states that they have leased their
4 land for year-round grazing in the past, but found due to various limitations that the land
5 could not support a “viable commercial operation.” Record 130. The Sullivans subsequently
6 removed their property from farm tax status, and currently use the property to raise horses for
7 personal use. The letter from Avery states that he owns a parcel to the west of the subject
8 property, has not been successful in grazing or farming it, and has no interest in using the
9 subject property for grazing. Record 219. Based on those two letters, the county concluded
10 that “even though adjacent or nearby properties with similar soils and slopes have attempted
11 agricultural operations in the past they have run into the same agricultural limitations as the
12 subject property.” Record 9.

13 Petitioner argues that the above-quoted finding regarding adjacent and nearby
14 properties is not supported by substantial evidence. Petitioner contends that the Avery letter
15 does not identify the location or size of his property, include any evidence that the Avery
16 property is comparable in soils or slopes to the subject property, or provide any details about
17 efforts to farm or graze the Avery property. Intervenors cite no evidence in the record that
18 the Avery property is similar to the subject property in soils or other relevant conditions, and
19 therefore we agree with petitioner that Avery’s stated lack of success in farming or grazing
20 his property has no apparent bearing on whether the subject property is suitable for farm use.

21 With respect to the Sullivan property, petitioner argues that the only “agricultural
22 limitations” cited by the county are those generally identified in the National Resource
23 Conservation Service (NRCS) survey for the type of soils found on the subject property and
24 Sullivan property, which NRCS nonetheless identifies as suitable for grazing. Petitioner
25 argues that the Sullivans’ apparent failure to establish a year-round grazing operation on their
26 property does not demonstrate that the subject property is not suitable for seasonal grazing,

1 similar to the grazing operations on the parcels to the west and north. According to
2 petitioner, “[n]o evidence has been submitted or findings have been made that explain why
3 the subject property cannot be used for grazing when these adjacent properties that are
4 similar in soils and aspects are suitable for grazing.” Petition for Review 9.

5 We agree with petitioner that the Sullivan letter is insufficient to establish that the
6 subject property is not suitable for grazing, given evidence that there are two adjoining or
7 nearby parcels with similar soils and slopes that support seasonal grazing operations. The
8 Sullivans’ failure to establish a year-round grazing operation on their property does not
9 necessarily mean that the subject property cannot support a seasonal grazing operation,
10 similar to those on parcels to the north and east. Indeed, as noted above, petitioner cites to
11 evidence that subject property is currently leased for seasonal grazing.

12 OAR 660-033-0030(2) and (3) require the county to consider conditions on adjoining
13 and nearby properties. We agree with petitioner that because the record indicates that
14 adjoining and nearby properties with similar soils and slopes support seasonal grazing
15 operations, the county cannot adopt a sustainable conclusion that the subject property is not
16 suitable for grazing under OAR 660-033-0020(1)(a)(B) unless it can point to some material
17 difference between the subject property and adjoining properties indicating that subject
18 property cannot reasonably be used for seasonal grazing, similar to those adjoining
19 properties. The record includes no evidence to that effect, and the county adopted no
20 findings regarding those adjoining properties, as required by OAR 660-033-0030(2) and (3).

21 The first assignment of error is sustained.

22 **SECOND ASSIGNMENT OF ERROR**

23 As relevant here, forest land subject to Goal 4 is land that is “suitable for commercial
24 forestry.” Goal 4 does not include a definition of that phrase. However, the administrative
25 rule implementing Goal 4, OAR 660-006-0030, requires local governments to inventory and

1 map forest lands based on capability for average annual wood production, as measured in
2 “cubic feet per acre.”⁵

3 OAR 660-006-0005(2) defines “cubic foot per acre” to mean

4 “* * * the average annual increase in cubic foot volume of wood fiber per acre
5 for fully stocked stands at the culmination of mean annual increment as
6 reported by the USDA Natural Resource Conservation Service (NRCS) soil
7 survey information, USDA Forest Service plant association guides, Oregon
8 Department of Revenue western Oregon site class maps, or other information
9 determined by the State Forester to be of comparable quality. Where such data
10 are not available or are shown to be inaccurate, an alternative method for
11 determining productivity may be used. An alternative method must provide
12 equivalent data as explained in the Oregon Department of Forestry’s
13 Technical Bulletin entitled ‘Land Use Planning Notes Number 3 dated April
14 1998’ and be approved by the Oregon Department of Forestry.”

15 In *Foley II*, we remanded because the record included no evaluation of the subject
16 property’s capability for average annual wood production, as measured in cubic feet per acre
17 per year (cf/ac/yr). On remand, intervenors submitted a report by a forestry consultant,
18 which concluded in relevant part that, depending on which “stocking levels” are assumed,
19 the subject property has the potential to produce from 47.7 cf/ac/yr to 76.6 cf/ac/yr. A
20 “stocking level” is apparently the percentage of the property area that can be stocked with
21 trees, after subtracting portions with rock outcrops or other areas with conditions where no
22 trees can grow to maturity. The consultant calculated productivity based on assumptions that
23 35 percent, 50 percent and 75 percent of the property could be fully stocked, yielding results
24 of 47.7 cf/ac/yr, 58.5 cf/ac/yr, and 76.6 cf/ac/yr, respectively. The consultant then compared
25 those productivity results against a purported “threshold” of 80 cf/ac/yr for non-resource

⁵ OAR 660-006-0010 provides, in relevant part:

“Governing bodies shall include an inventory of ‘forest lands’ as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands or lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken are not required to be inventoried under this rule. Outside urban growth boundaries, this inventory shall include a mapping of average annual wood production capability by cubic foot per acre (cf/ac). If site information is not available then an equivalent method of determining forest land suitability must be used. * * *”

1 land, and concluded that under the most optimistic stocking level the subject property could
2 not produce 80 cf/ac/yr, and therefore was not forest land subject to Goal 4. Record 142.

3 The consultant stated that the 80 cf/ac/yr threshold “has been determined by Douglas
4 County to be the measuring parameter for nonresource parcels.” Record 136. However, the
5 consultant did not explain the source of that threshold. Petitioner argues that the apparent
6 source is a statement in the county comprehensive plan that “lands producing less than eighty
7 cubic feet per acre per year are generally not used for commercial uses.”⁶ However, as
8 petitioner points out, LUBA has held that the text and context of that comprehensive plan
9 language do not set a threshold for determining whether land is protected by Goal 4.
10 *Wetherell v. Douglas County (Great American Properties)*, 50 Or LUBA 167, 199 (2005),
11 *rem’d on other grounds* 204 Or App 732, 132 P3d 41 (2006), *rev’d on other grounds* 342 Or
12 666, 160 P3d 614 (2007).⁷ We agree with petitioner that the county erred to the extent it

⁶ The Douglas County Comprehensive Plan, at 2-3, states:

“In Douglas County, lands growing Douglas fir which produce less than eighty cubic feet per acre per year are generally not used for commercial uses. This is higher than the national standard for commercially productive forest land, which is twenty cubic feet per acre per year.”

⁷ We stated in *Wetherell v. Douglas County (Great American Properties)*:

“The comprehensive plan language relied upon * * * does not suggest, much less clearly evince, an intent to adopt 80 cf/ac/yr as the threshold for Goal 4 protection, or as a definition of lands ‘suitable for commercial forestry.’ The statement is one of 50 ‘Forest Resource Findings’ that preface the plan policies that actually implement Goal 4. The language reads like most of the other ‘findings’ in that section, as a factual and historical recitation, summing up the relevant facts and considerations that underlie and justify the comprehensive plan policies that follow: in Douglas County, lands growing Douglas fir that produce less than 80 cf/ac/yr are ‘generally’ not used for ‘commercial uses,’ unlike other parts of the country with less productive forest lands. It is a statement of historical fact, not a standard or definition of forest lands protected by Goal 4.

“The county’s view that the 80 cf/ac/yr plan language defines the threshold of lands protected by Goal 4 becomes even more tenuous when the comprehensive plan policies that actually implement Goal 4 are considered. As petitioners point out, the Policy Implementation section describes two plan designations applicable to forest lands: the first, Timberlands, is intended for prime forest lands, and includes ‘[f]orest lands which are predominantly cubic foot site class 1 through 4 in southern Douglas and 1 through 3 in central and northern Douglas County.’ Petitioners explain that site class 4 includes lands capable of producing 85 to 119

1 relied upon that comprehensive plan language to apply a 80 cf/ac/yr threshold for
2 determining whether land is “suitable for commercial forestry” and therefore protected by
3 Goal 4. Because the consultant’s report relies on that purported threshold to conclude that
4 the subject property is not suitable for commercial forestry, the report is not substantial
5 evidence supporting the county’s finding the subject property is not forest land protected
6 under Goal 4.

7 In *Just v. Linn County*, 60 Or LUBA 74 (2009), we reviewed a number of decisions
8 under Goal 4, and described the analytical approach necessary to evaluate whether land is
9 suitable for commercial forestry under Goal 4:

10 “[A]lthough the Land Conservation and Development Commission (LCDC)
11 requires that cf/ac/yr data be considered in determining whether to inventory
12 land as suitable for commercial forest use, it has not established a threshold or
13 thresholds for the level of cf/ac/yr productivity that qualifies land as suitable
14 for commercial forest use. LUBA’s cases on that question similarly have not
15 established bright-line productivity standards. * * *

16 “Our cases suggest that land with a productivity of less than 20 cf/ac/yr may
17 be unsuitable for commercial forest use unless there are factors that
18 compensate for the land’s relatively low productivity. But land in a middle
19 range from a low of approximately 40 cf/ac/yr to a high of approximately 80
20 cf/ac/yr is unlikely to be unsuitable for commercial forest use unless there are
21 additional factors that render those moderately productive soils unsuitable for
22 commercial forest use. Rural land with a wood fiber productivity of over 80
23 cf/ac/yr is almost certainly suitable for commercial forest use, even if there are
24 limiting factors.” *Id.* at 83-84 (footnote omitted).

cf/ac/yr. The second plan designation, Farm/Forest Transitional, is intended for nonprime forest lands, and includes ‘[f]orest lands which are predominantly cubic foot site class 5 or below in southern Douglas County and 4 through 5 in northern, central, and coastal Douglas County[.]’ Site class 5 includes lands capable of producing 50 to 84 cf/ac/yr, while site class 6 includes lands capable of producing 20 to 49 cf/ac/yr. There is no dispute that both the Timberland and Farm/Forest Transitional plan designations are Goal 4 designations. The fact that comprehensive plan designations implementing Goal 4 include lands capable of producing 85 cf/ac/yr as *prime* forest lands, and include lands capable of producing considerably less than 85 cf/ac/yr as nonprime forest lands nonetheless protected by Goal 4 strongly undercuts the county’s interpretation that 80 cf/ac/yr is the threshold standard for Goal 4 protection.” 50 Or LUBA at 198-99 (footnote omitted).

1 See also *Anderson v. Coos County*, 60 Or LUBA 247 (2009) and *Anderson v. Coos County*,
2 __ Or LUBA __ (LUBA No. 2010-035, September 1, 2010) (applying the above-quoted
3 language from *Just*).

4 In the present case, the potential productivity described in the consultant’s report,
5 from 47.7 cf/ac/yr to 76.6 cf/ac/yr, is in the “middle range” of productivity described in *Just*.
6 If that is the case, then the subject property is “unlikely to be unsuitable for commercial
7 forest use unless there are additional factors that render those moderately productive soils
8 unsuitable for commercial forest use.” *Just*, 60 Or LUBA at 84. Because the consultant and
9 county appeared to believe, erroneously, that land with potential productivity less than 80
10 cf/ac/yr is, without more, land that is not suitable for commercial forestry, there was no
11 attempt to identify any “additional factors” or explain why property with the moderately
12 productive soils is nonetheless unsuitable for commercial forestry. The consultant appears to
13 question whether any significant portion of the subject property can, in fact, be stocked with
14 trees that would grow to maturity. If there were substantial evidence to establish that such is
15 the case then it might be reasonable to conclude that the subject property is not suitable for
16 commercial forestry, notwithstanding the nominal potential of the moderately productive
17 soils. However, as the record stands, even the lowest stocking level of 35 percent assumed in
18 the consultant’s study results in potential productivity within the “middle range” described in
19 *Just*. Because the study and the county’s findings do not identify any “additional factors”
20 that would render the subject property unsuitable for commercial forestry, despite the
21 potential productivity of its soils, the county’s finding that the subject property is not forest
22 land protected by Goal 4 is not supported by substantial evidence.

23 The second assignment of error is sustained.

24 The county’s decision is remanded.