BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DEREK JOHNSON and ARTHUR JOHNSON, Petitioners, vs. LANE COUNTY, Respondent, and DOUG HENTON, Intervenor-Respondent.	LUBA No. 95-207 FINAL OPINION AND ORDER

Appeal from Lane County.

Bill Kloos, Eugene, filed the petition for review and argued on behalf of petitioners. With him on the brief was Johnson, Kloos & Sherton.

Stephen L. Vorhes, Assistant County Counsel, Eugene, filed a response brief and argued on behalf of respondent.

Paul V. Vaughan, Eugene, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was Hershner, Hunter, Moulton, Andrews & Neill.

GUSTAFSON, Referee; LIVINGSTON, Chief Referee; HANNA, Referee, participated in the decision.

REMANDED 08/19/96

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

Opinion by Gustafson.

NATURE OF THE DECISION

Petitioners appeal the county's order approving an irrevocably committed exception to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), amending the comprehensive plan designation of a 17.3-acre parcel from Agriculture to Rural, and changing the zone designation from Exclusive Farm Use (E-30) to Rural Residential (RR-5).

MOTION TO INTERVENE

Doug Henton (intervenor), the owner of the subject property and the applicant below, moves to intervene in this proceeding on the side of respondent. There is no opposition to the motion, and it is allowed.

MOTION TO FILE REPLY BRIEF

Petitioners filed a motion to file a reply brief. A reply brief accompanied the motion. The reply brief responds to new issues raised in the response briefs, and it is allowed.

FACTS

Intervenor applied to the county for a comprehensive plan amendment, an exception to Goals 3 and 4, and a zone change to allow rural residential use on a 17.3-acre parcel zoned E-30. The subject property is located approximately three miles east of Springfield, and is bounded to the north by the Eugene Water and Electric Board (EWEB) tail race channel. The EWEB channel and Camp Creek Road, which runs

adjacent to the channel, separate the subject property from an 11-acre parcel to the north which is also owned by intervenor. That parcel contains a dwelling, and is zoned impacted forest (F-2). A small bridge, with a posted five-ton weight limit, provides access to the subject parcel from the north. To the west of the proposed exception area is a 26-acre parcel zoned E-30 and used for hay production. Two existing exception areas form the south and east boundaries of the subject property; the parcels in those areas are zoned RR-5, and each exception area contains at least one dwelling.

The subject property contains approximately ten acres of open pasture on Class II soil, and approximately seven acres of trees and riparian vegetation on soil that is not suited for agricultural use. No dwellings exist on the property.

Petitioners appeal the board of commissioners' approval of intervenor's application.

FIRST ASSIGNMENT OF ERROR[1]

Petitioners contend the findings adopting an

[1]The county urges that the first, second, third, fourth, fifth, sixth, and seventh assignments of error should be dismissed because they "raise several arguments which differ from those made before the county." Respondent's Brief 2. ORS 197.835(3) limits issues before this Board to those raised before the local governing body. It does not, however, require that all arguments regarding those issues be identical. In their reply brief, petitioners establish that all issues raised before this Board were adequately raised below. We will, therefore, consider each of petitioners' assignments of error.

irrevocably committed exception to Goals 3 and 4 do not satisfy ORS 197.732(1)(b), Goal 2, Part II(b) and OAR 660-04-028. Petitioners specifically contend the county's findings do not adequately address all applicable factors of OAR 660-04-028(2) and (6), are not supported by substantial evidence in the record, and do not establish that the uses allowed by Goals 3 and 4 are impracticable.

ORS 197.732(1)(b), Goal 2, Part II(b) and OAR 660-04-028(1) all establish the same standard for granting a committed exception to the goal requirements: "[E]xisting adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable." To implement that standard, OAR 660-04-028(4) requires that

> "[a] conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area."

OAR 660-04-028(2) and (6) set forth the factors the local government must apply in evaluating a request for a goal exception.[2]

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[2]OAR 660-04-028(2) and (6) provide, in relevant part:

> "(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:
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> "(a) The characteristics of the exception area;

In reviewing local government decisions adopting irrevocably committed exceptions, this Board's approach is

> "first to resolve any contentions that the findings fail to address issues relevant under OAR 660-04-028 or address issues not properly considered under OAR 660-04-028. We next consider any arguments that particular findings are not supported by substantial evidence in the record. Finally, we determine whether the findings that are relevant and supported by substantial evidence are sufficient to demonstrate compliance with the standard of ORS 197.732(1)(b) that 'uses allowed by the goal [are] impracticable.'" 1000 Friends

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> "(b) The characteristics of the adjacent lands;
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> "(c) The relationship between the exception area and the lands adjacent to it; and
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> "(d) The other relevant factors set forth in OAR 660-04-028(6).
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> "* * * * *
>
> "(6) Findings of fact for a committed exception shall address the following factors:
>
> "(a) Existing adjacent uses;
>
> "(b) Existing public facilities and services (water and sewer lines, etc.);
>
> "(c) Parcel size and ownership patterns of the exception area and adjacent lands:
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> "* * * * *
>
> "(d) Neighborhood and regional characteristics;
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> "(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. * * * ;
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> "(f) Physical development according to OAR 660-04-025; and
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> "(g) Other relevant factors."

of Oregon v. Columbia County, 27 Or LUBA 474, 476 (1994).

A. Adequacy of Findings

Petitioners contend the county's findings fail to address issues relevant under OAR 660-04-028(2) and (6) because: (1) the findings relating to the characteristics of the adjacent lands and uses are inadequate; (2) the county failed to make findings regarding whether the partitioning or subdividing of adjacent lands included findings made against the goals; (3) the county impermissibly relied on findings regarding adjacent exception areas to justify its decision; and (4) the county failed to make findings regarding the practicability of timber production on the subject property.[3]

Petitioners first argue that the county failed to acknowledge adjacent lands to the north as being in the same ownership as the subject parcel, that the county failed to acknowledge adjacent lands to the east as being in a single ownership, and that the county failed to make findings regarding the proximity of developed uses on adjacent lands.

[3]Petitioner also argues the findings justifying the exception are inadequate because they do not address compatibility of adjacent exception areas with resource use on the subject property, which petitioner argues is required under OAR 660-04-018(2)(b)(C). That rule does not apply to requests for exceptions under Goal 2. OAR 660-04-018(2)(b)(C) applies to plan and zone designations for properties for which exceptions have been taken, and requires that the proposed "rural uses are compatible with adjacent or nearby resource uses." Petitioners' challenge to compliance with OAR 660-04-018(2)(b)(C) for the requested plans and zone designations is addressed under the seventh assignment of error.

"However, under OAR 660-04-028(2)(b) and (6)(a), findings regarding adjacent lands must only address the "characteristics of the adjacent lands" and "existing adjacent uses."[4] The county's findings adequately describe the physical characteristics and existing uses of the adjacent lands. Record 22-23.

Next, petitioners contend the county failed to make findings required by OAR 660-04-028(6)(c)(A) regarding whether the partitioning of adjacent lands was made in compliance with the goals. Under OAR 660-04-028(4), a local government's conclusion that an exception area is irrevocably committed "shall be supported by findings of fact which address all applicable factors of section (6) of this rule * * *.

Petitioners are correct that the county's actual findings, set forth in a 28-page document entitled "findings of fact and conclusions of law," contain no analysis regarding whether findings against the goals were made at the time the adjacent exception areas were partitioned. However, intervenor and the county point to documents in the record that appear to be copies of the county's original

[4]As explained in our discussion of petitioners' substantial evidence argument, petitioners may be correct that the county's findings fail to adequately address the fact that the parcel to the north is in the same ownership as the subject parcel. However, the ownership pattern analysis required by OAR 660-04-028(6)(c) is separate from the description of the characteristics and uses of adjacent lands required by OAR 660-04-028(2)(b) and (6)(a).

findings regarding the adjacent exception areas, and that provide parcel creation and goal compliance history for those areas. Apparently, those documents were attached to the application that intervenor submitted to the county. The county's findings purport to "adopt and incorporate" intervenor's entire application and all of the "facts and reasons provided by the applicant." Record 9. It is those incorporated findings upon which intervenor and the county rely to establish compliance with this requirement.

If a local government wishes to incorporate all or portions of another document by reference into its findings, it must (1) clearly indicate its intent to do so, and (2) clearly identify the document or portions of the document so incorporated. Gonzalez v. Lane County, 24 Or LUBA 251, 259 (1992). A local government decision will satisfy these requirements if a reasonable person reading the decision would realize that another document is incorporated into the findings and, based on the decision itself, would be able both to identify and to request the opportunity to review the specific document thus incorporated. Id.

The section of the findings prepared by the county that addresses parcel size and ownership patterns of the exception area and adjacent lands does not contain any reference to the analysis required by OAR 660-04-028(6)(c)(A), and does not suggest that the county is relying upon separate incorporated documents to provide that

analysis.[5] The county's incorporation of intervenor's entire 66-page application, without more, does not provide a sufficient reference to the specific documents relied upon by the county to satisfy the applicable criteria.

The long established standard for evaluating the adequacy of local government findings was articulated in Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 1, 569 P2d 1063 (1977):

> "What is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. * * *"

With respect to the analysis required by OAR 660-04-028(4) and (6)(c)(A), the county's blanket incorporation of all the "facts and reasons supplied by applicant" into its findings document does not satisfy this standard.

Petitioners next contend the county violated OAR 660-04-028(6)(c)(A) by relying on the existence of adjacent exception areas to justify a committed exception for the subject property. The county's findings repeatedly state that a committed exception is appropriate for the subject property because the parcel is bounded on two sides by

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[5]Also, the attachments to intervenor's application are not clearly identified. The final page of the application identifies ten "attachments," listed numerically. However, the attachments themselves, which span more than 50 pages in the record, are not numbered, and the documents upon which the county appears to be relying are inexplicably labeled "Exhibit G" and "Exhibit LL". Record 463-519.

previously acknowledged exception areas and "is a logical part of the residential development pattern existing within the area and therefore is to be included within the adjacent exception area 502-2." Record 22; see also Record 23, 25, 31.

Intervenor responds, and we agree, that the rule relied upon by petitioners does not categorically prohibit reliance upon the existence of adjacent exception areas in granting a committed exception. OAR 660-04-028(6)(c)(A) states:

> "Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels."

This rule permits consideration of past land divisions as one factor in the analysis of whether a committed exception should be allowed if the manner of development on the resulting parcels or other factors makes resource use

unsuitable on those parcels or on nearby lands.

In this case, there is evidence in intervenor's application suggesting that parcels to the south and east were created without application of the goals. Record 487, 507-09. Findings establishing that fact could be used as one factor in justifying an exception if those findings also established that development on the parcels, or other factors, makes resource use unsuitable. However, as we determined above, the county's findings do not adequately establish how or when those parcels were created. Without those findings, the county's reliance on the adjacent non-resource parcels as support in justifying the exception is necessarily impermissible.

Finally, petitioners contend the county failed to make findings regarding the practicability of timber production on the subject property. Intervenor points to adequate findings in the record to support the county's determination that timber production is impracticable on the subject property. Record 26, 201, 205.

This subassignment of error is sustained, in part.

B. Substantial Evidence

Petitioners contend that the following findings regarding the committed lands determination are not supported by substantial evidence in the record: (1) a five-ton load limit exists for a bridge over the EWEB canal; (2) water rights for irrigation are not available to the subject

property; (3) the subject property is not suitable for agricultural use; and (4) the subject property is not adjacent to other forest land.

The first three findings challenged by petitioners essentially reflect their disagreement with the county's evaluation of the evidence and the conclusions it reached based on that evidence. As we have frequently stated, the responsibility for evaluating evidence and determining what evidence to believe lies with the county; our review is limited to determining whether the whole record contains evidence upon which a reasonable person could rely to reach the conclusions the county did here. Sandgren v. Clackamas County, 29 Or LUBA 454, 460-61 (1995). That petitioner may disagree with the county's conclusions provides no basis for this Board to reverse or remand the challenged decision. McGowan v. City of Eugene, 24 Or LUBA 540, 546 (1993). The record contains evidence sufficient to support the county's conclusions regarding the first three issues raised by petitioner in this subassignment of error. Record 10, 12-14, 335.

In their final evidentiary challenge, petitioners assert there is not substantial evidence to support the county's conclusion that the subject property is not adjacent to other forest land because the F-2 parcel to the north, across the EWEB canal, is adjacent forest land. The county and intervenor respond that the challenged finding

reflects the county's determination that the parcel to the north is not "contiguous" to the subject parcel under OAR 660-04-028(6)(c)(B) because the two properties are separated by the EWEB canal and Camp Creek Road.[6] The county concludes that "[t]he findings adequately consider" the fact that the parcel to the north is not contiguous. Respondent's Brief 13.

We disagree. The findings adopted by the county contain no analysis of OAR 660-04-028(6)(c)(B), and do not articulate the county's basis for its conclusion that the parcel to the north is not contiguous to the subject property. Under OAR 660-04-028(6)(c)(B), two contiguous parcels under the same ownership are to be treated as a single operation for purposes of the committed exception analysis, even if those parcels are separated by a road. Here, the subject property and the parcel to the north are both owned by intervenor, and are separated by a road and the EWEB canal. It may be that the location, configuration, and use of the EWEB canal prevent the two parcels from being "contiguous" for purposes of the rule. However, such a conclusion has not been factually established by the county,

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[6]OAR 660-04-028(6)(c)(B) provides, in relevant part:

> "Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. for example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. * * *."

and the findings do not explain why the presence of the EWEB canal prevents treatment of the two parcels as a single operation under OAR 660-04-028(6)(c)(B).

In addition, the county's conclusion that the parcel to the north is not contiguous to the subject property is inconsistent with other conclusions reached in approving the committed exception. In its findings, the county frequently treats the parcel to the north as adjacent when doing so supports its conclusion that resource use of the subject property is impracticable. For example, the findings repeatedly conclude that a committed exception is appropriate because the subject parcel is surrounded "on three sides" (the north, east, and south) by "residential development."[7] Record 23, 25, 31. Also, intervenor's application, which the county purported to wholly adopt and incorporate into its findings, states that a committed exception is appropriate for the subject parcel under county guidelines providing that "parcels of 20 acres or less with dwellings on three or more adjoining sides are committed to non-resource uses that make it impracticable to conduct farm or forest management." Record 47, 65. Thus, despite the county's contention that the parcel to the north is not adjacent to the subject parcel, its own findings reflect the

[7]The parcel to the north contains one dwelling on an 11-acre forest parcel. We are troubled by the county's mischaracterization of this parcel as being used for "residential development."

opposite conclusion.

This Board is authorized to reverse or remand the challenged decision if it is "not supported by substantial evidence in the whole record." ORS 197.835(7)(a)(C). In evaluating the substantiality of the evidence in the whole record, we are required to consider whether supporting evidence is refuted or undermined by other evidence in the record, but cannot reweigh the evidence. Wilson Park Neigh. Assoc. v. City of Portland, 27 Or LUBA 106, 113 (1994). Where the county adopts conflicting findings that are not reconciled in the challenged decision, the conflict may sufficiently undermine the sufficiency of the findings to render them inadequate. Doob v. Josephine County, 27 Or LUBA 293, 301 (1994). Here, the county's conclusion that the two parcels are not contiguous is not factually established and is inconsistent with evidence relied upon by the county regarding nonresource use on adjacent parcels. The county's finding is not supported by substantial evidence in the record.

This subassignment of error is sustained, in part.

C. Impracticability of Uses Allowed by the Goals

Even where the county's findings in support of a committed lands exception address all the required factors and those findings are supported by substantial evidence, those findings may be insufficient to demonstrate compliance with the standard of ORS 197.732(1)(b) that uses allowed by

the goals are impracticable. 1000 Friends of Oregon v. Columbia County, 27 Or LUBA 474, 476 (1994). As we have repeatedly recognized,

> "[t]he impracticability standard is a demanding one. For [LUBA] to conclude the county correctly determined the disputed areas are irrevocably committed to uses not allowed by Goals 3 and 4, the county must adopt findings explaining why its ultimate legal conclusion of impracticability follows from the findings of fact." 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA 508, 519 (1994); see also DLCD v. Coos County, 29 Or LUBA 415, 419 (1995).

Under ORS 197.732(1)(b) and OAR 660-04-028, in order to approve an irrevocably committed exception, the county must find that "all uses allowed by the goals are impracticable, primarily as a result of uses established on adjacent parcels." Sandgren v. Clackamas County, 29 Or LUBA 454, 458 (1995). The county has failed to satisfy this standard, because the findings contain no discussion or explanation of how the existing uses on the adjacent parcels make resource use on the subject property impracticable.

The county's findings place significant emphasis on its determination that the subject property is "a logical part of the exception area because it is surrounded on three sides by nonresource residential development and is not a part of the block of agricultural land existing to the west." Record 31. However, while the findings repeatedly state that the subject parcel would more "logically" be included with the exception areas to the south and east, the

findings provide no information explaining why the adjacent uses and parcelization patterns make farm and forest uses impracticable. This is a crucial aspect of the inquiry required under OAR 660-04-028.

Intervenor and the county argue that the county's findings apply certain guidelines established by the 1989 addendum to its Developed and Committed Lands Working Paper (working paper), and that those findings adequately explain how the impacts of adjacent residential development make resource use of the property impracticable. The working paper contains guidelines developed by the county to assist in the identification of developed and committed lands. In its findings, the county determined that the subject parcel qualified for a committed exception under a guideline from the working paper which provides that "parcels with dwellings on two adjoining sides are impracticable for farm management if 15 acres or less, and impracticable for forest management if 20 acres or less." Record 24. Although the subject property consists of 17.3 acres, the county determined that because only a 10-acre portion has soil suitable for farm management, the working paper guideline applying to farm management was met.[8]

Petitioner argues that the county's "wooden

[8]For the purposes of this opinion, we assume, but do not decide, that the county's application of this guideline to a parcel larger than 15 acres is valid.

application" of the working paper guidelines does not provide the requisite reasoning and explanation of why the existing uses on adjacent lands make resource use of the property impracticable. Petition for Review 23. Intervenor responds that the county did not exclusively rely on the working paper guidelines, but also adopted the expert opinion of an agricultural consultant who investigated the subject property and "explained why the small lot residential development to the east and south contributed to making resource use of the subject property impracticable." Intervenor's Brief 37.

Our review of the consultant's report does not reveal the analysis suggested by intervenor. The report primarily addresses size and soil limitations on the subject parcel, and makes only passing reference to the adjacent properties. Record 77-79. The county's findings fail to explain why the adjacent uses and parcelization patterns make farm and forest uses impracticable, and are therefore insufficient to support a committed exception under OAR 660-04-028.

This subassignment of error is sustained.

The first assignment of error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

Petitioners contend the county erred in failing to apply Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) to its decision. Petitioners argue that the rezoning of the subject property will create conflicts

with two inventoried Goal 5 resources, big game habitat and riparian habitat, and that the county failed to undertake the requisite economic, social, environmental and energy (ESEE) analysis regarding those resources.

The county responds, and we agree, that it correctly concluded no conflicts exist with big game habitat because the subject property and the adjacent exception areas are located within a peripheral range that includes no specific wildlife habitat sites or sensitive areas and commonly includes residential zoning. Record 20, 245. The county further points out that the EWEB canal is a Class I stream for which riparian habitat is protected under the setback requirements of the county plan. Because the protections afforded the stream and riparian vegetation under the county plan are unchanged by the rezoning, the county correctly concluded that there is no conflict between uses, and no ESEE analysis is required. Record 246.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners contend the county erred in failing to apply Goal 7 (Regional Planning) to its decision because the parcel is within the regulated floodplain of the McKenzie River, and the rezoning "will increase the exposure of life and property to damage from the hazard." Petition for Review 30. Intervenor responds, and we agree, that there is substantial evidence in the record supporting the county's

determination that none of the subject property is located in a floodway and that the property may be built upon under the applicable county regulations that implement Goal 7 and minimize hazard from flooding. Record 10, 16.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioners contend the county's decision violates the county's Rural Comprehensive Plan Goal 2, Policy 16, which provides that lands which are not farm and forest lands may be designated as rural residential only if detailed factual documentation is presented indicating that the lands are not farm and forest lands as defined by Goals 3 and 4. Petitioners also contend the decision violates the county's Rural Comprehensive Plan Goal 3, Policy 3.

The county responds that these policies do not apply to a decision creating an exception to Goal 3 for designated farm land. We agree. Under petitioners' proposed application of Policy 16, when a county removes a parcel of property from its inventory of farm land by virtue of an exception to Goal 3, in order to designate the parcel as rural residential, the county must present additional findings demonstrating that the newly excepted parcel is not farm land as defined by Goal 3. Such a result would be nonsensical. Further, an acknowledged exception area is specifically excluded from the definition of agricultural land under Goal 3.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

Petitioners contend the county misconstrued the applicable law and failed to make adequate findings supported by substantial evidence in the record when it amended the Rural Comprehensive Plan. Specifically, petitioners argue that the county erred in finding compliance with Lane County Code 16.400(6)(h)(iii), which sets forth five criteria, at least one of which must be the basis for a minor amendment to the plan. The decision adopted by the county found compliance with two of these criteria, finding that the minor amendment satisfied criterion (iv-iv) because it was "necessary to provide for the implementation of adopted Plan policy or elements," and also that the amendment was "otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper," and was therefore appropriate under criterion (v-v). Record 15-16.

Under the county code, only one of the two above-stated criteria must be satisfied in order to justify a minor amendment to the plan. We note that the discretionary standard set forth in criterion (v-v) is not particularly stringent, and only requires the county to briefly set forth in its decision the reasons why the amendment is desirable, appropriate or proper. The findings adopted by the county state that "[t]he Board of Commissioners also finds, based

upon reasons set forth in this document, that it is desirable, appropriate and proper" to redesignate the subject property as rural residential. Record 15. The findings then set forth certain specific reasons why the county finds the designation to be desirable. This is all that is required of the county under the criteria for a minor plan amendment.

The fifth assignment of error is denied.

SEVENTH ASSIGNMENT OF ERROR

Petitioners contend the county misconstrued the applicable law and failed to make sufficient findings when it applied a rural residential, RR-5 zoning density to the subject property.

A. OAR 660-04-018(2)(b)(B) and (C)

Under OAR 660-04-018(2)(b), rural uses allowed by plan and zone designations in an irrevocably committed exception area must meet the following requirements:

> "(A) The rural uses are consistent with all other applicable Goal requirements; and
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> "(B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-04-028; and
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> "(C) The rural uses are compatible with adjacent or nearby resource uses."

Petitioners contend the county has not established that the rezoning will not commit adjacent resource lands to the west and north to nonresource use, as required by OAR 660-04-018(2)(b)(B); or that the rural residential uses allowed

by the rezoning will be compatible with adjacent or nearby resource uses, as required by OAR 660-04-018(2)(b)(C). According to petitioners, if any rezoning is permissible, it must be to RR-10, rather than to RR-5.

In response, intervenor and the county point to the county's finding that redesignation of the subject parcel will not cause the "adjacent resource lands" to satisfy the working paper guidelines for irrevocably committed exceptions.[9] Record 65-66. The county's conclusory application of the working paper guidelines does not substitute for the actual analysis required under OAR 660-04-018(2)(b)(B). The findings cited by intervenor and the county merely recite the working paper guidelines and state that "[a]djacent resource lands do not meet this guideline." Record 65. No explanation or analysis is provided regarding why the guideline is not met with regard to the adjacent resource lands.

In addition, although there is some discussion of the compatibility of the rezoning on the adjacent property to

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[9]As discussed above with regard to assignment of error 1(B), elsewhere in its findings the county concludes that the subject parcel is not adjacent to the forest parcel to the north. Record 26. Although that conclusion is not explained in the findings, intervenor and the county argue in their briefs that the parcel to the north is not adjacent to the subject property because the parcels are separated by the EWEB canal. Intervenor's Brief 29; Respondent's Brief 13. Intervenor and the county now argue that OAR 660-04-018(2)(b)(B) is satisfied with regard to the parcel to the north by a finding that rezoning of the subject parcel will not commit "adjacent resource lands" to nonresource use. These positions are inherently inconsistent.

the west, the findings contain no discussion of the F-2 land to the north, and there are no findings establishing compliance with OAR 660-04-018(2)(b)(C).

Petitioner suggests that OAR 660-04-018(2)(b) also requires the county to evaluate the compatibility of adjacent or nearby nonresource properties. We find the requirements of 660-04-018(2)(b) to be limited to evaluation of adjacent or nearby resource uses only. However, the rule does require the county to analyze whether rezoned rural uses will commit both adjacent and nearby resource land to nonresource use. Regardless of whether the F-2 zoned land to the north is "adjacent" or "nearby," the county must consider uses on that property, as well as resource uses to the west, in evaluating compliance with OAR 660-04-018(2)(b)(B) and (C).

This subassignment of error is sustained.

B. Rural Comprehensive Plan Goal 2, Policy 11

Petitioners also argue that the county did not justify RR-5 zoning as being consistent with the criteria set forth in the county's Rural Comprehensive Plan Goal 2, Policy 11. Intervenor responds, and we agree, that the applicable criteria are adequately addressed in the findings.

This subassignment of error is denied.

The seventh assignment of error is sustained, in part.

SIXTH ASSIGNMENT OF ERROR

Petitioners contend the county misconstrued the

applicable law in determining that the rezoning to RR-5 requires no Statewide Planning Goal analysis "beyond that provided in connection with the plan amendment." Record 35. The county responds that its decision also includes a finding that "[e]ach of the findings stated previously in response to other criteria applies as well here to the relevant criteria," and that all applicable goals are addressed in those findings. Regardless, petitioners do not identify any particular goal applicable to the rezoning that was not addressed in the previous section of the findings.

The sixth assignment of error is denied.

The county's decision is remanded.