

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

3 1000 FRIENDS OF OREGON, the       )  
4 assumed name of Oregon Land       )  
5 Use Project, Inc., an Oregon       )  
6 nonprofit corporation, and        )  
7 NEIL C. TALCOTT,                    )  
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9                   Petitioners,        )  
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1 COX, Referee

2 Nature of Proceeding

3 Petitioners are contesting the approval by the Douglas  
4 County Board of Commissioners of a subdivision in Douglas  
5 County, near the City of Glide, Oregon, creating what is  
6 known as the Colliding River ranches. The Board of County  
7 Commissioners' decision was made October 17, 1979. As find-  
8 ings of fact and conclusions of law, the Board of County  
9 Commissioners adopted and incorporated by reference the Douglas  
10 County Planning Commission's June 21st, 1979, Findings of  
11 Fact and Conclusions of Law. Based on the Planning Commission's  
12 findings and conclusions, the County Commissioners found that  
13 the applicant had met all requirements of the Douglas County  
14 ordinances for preliminary plat approval and had adequately  
15 addressed all Land Conservation and Development Commission  
16 Goals which applied thereto. The County affirmed the Planning  
17 Commission's decision for approval of the subdivision.

18 Standing

19 This is a quasi-judicial proceeding. Petitioner  
20 Neil C. Talcott clearly established his standing. Mr.  
21 Talcott appeared before the county, demonstrating interests  
22 that are adversely affected or aggrieved by the subdivision,  
23 showed that he is a neighboring landowner, was entitled, as a  
24 matter of right, to notice and hearing and filed notice of  
25 intent to appeal to this Board.

26 As regards petitioner 1000 Friends standing (which respondent

1 contests), since petitioner Neil Talcott has standing to bring  
2 this matter before this Board in his own right, and by affidavit  
3 1000 Friends established that Talcott became a member of their  
4 organization on April 17, 1979, then petitioner 1000 Friends  
5 has representational standing to appear in this case.

6 The question as to whether 1000 Friends had representational  
7 standing to promote the interests of its members before the Land  
8 Conservation and Development Commission (LCDC) was decided in their  
9 favor in 1000 Friends of Oregon v. Multnomah County, 39 Or App 917  
10 (1979), citing Hunt v. Washington Apple Advertising Comm'n,  
11 432 US 333, 343, 97 S Ct 2434, 53 L Ed 2d 383, 394 (1977). That  
12 case interpreted 1000 Friends standing in relation to then  
13 existing ORS 197.300(1)(d) which predicated standing on a show-  
14 ing of being "substantially affected" by a provision or regula-  
15 tion. Standing to appear before this Board is predicated in part  
16 on a showing of being "adversely affected or aggrieved" by a land  
17 use decision (Oregon Laws 1979, Ch 772, §4). We find no material  
18 difference with respect to representational standing resulting  
19 from the change of wording between ORS 197.300(1)(d) and Oregon  
20 Laws 1979, Chapter 772 therefore we will follow the Court of  
21 Appeals decision in 1000 Friends v. Multnomah County, supra.

22 In light of the above, Petitioner 1000 Friends of Oregon  
23 has standing to appear not only as attorneys for Neil Talcott  
24 but has representational standing as well.

25 Issues Petitioners Seek to have Reviewed

26 The petitioners seek reversal of Respondent Douglas County's

1 order approving the Colliding River ranches subdivision. Peti-  
2 tioners allege that the decision violates LCDC Goal 3, Agri-  
3 cultural Lands, and 4, Forest Lands. More specifically,  
4 petitioners assign three errors as follows:

5 "The county erred by failing to find,  
6 as required by Goal 3, that the 40-acre lots  
7 created by the subdivision are appropriate for  
8 the continuation of the existing commercial  
9 enterprise within the area."

10 "The county erred in finding that under  
11 LCDC's 'Agricultural/Forest Goals Interrelation-  
12 ship' policy paper, the subdivision does not  
13 violate Goal 3."

14 "The county erred by failing to make  
15 adequate findings that the subdivision will  
16 retain forest land for forest uses and will  
17 not hinder growth."

#### 18 FACTS

19 The applicants herein (Respondents Flury, Lander, and Broyhill)  
20 have proposed the subdivision of an approximately 860 acre ranch into  
21 13 parcels, 12 of approximately 40 acres each to be used as small  
22 woodlands, with the remaining approximately 380 acres to be retained  
23 as an agricultural unit. The property is located near Little  
24 River, about two miles southeast of Glide, Oregon, and is outside  
25 the boundaries of the Glide Sewer District and the Glide Rural  
26 Fire District. Any residential development would require the  
Department of Environmental Quality to approve septic tank  
sites for alternative disposal systems. Telephone and electric  
services would be available at the owner's expense. Water is  
available through streams, springs and wells. The record indi-  
cates there was no response regarding impact on schools from

1 School District No. 12 of Douglas County.

2 The subdivision is located in the North Umpqua area of  
3 Douglas County's Comprehensive Plan (unacknowledged) and  
4 designated for both agricultural and timber uses. The soil  
5 classification indicated in the record provides that of the  
6 480 acres slated for division into 12 parcels, 290 acres contain  
7 Class II, III and IV soils, while 190 acres contain Class VI or  
8 greater soils. The remaining 380 acres which the applicants  
9 propose to leave as agricultural property is predominantly  
10 Class II, III and IV soils. The property is in an area made  
11 up of the commercial enterprises of sheep and cattle raising  
12 and timber harvesting. According to a 1979 North Umpqua Plan  
13 Advisory Council map of the North Umpqua Planning Area, the  
14 subject property is in an area of agricultural units ranging  
15 in size from 150 acres to over 3600 acres. In addition, large  
16 units of commercial timberlands are in the vicinity of the  
17 proposed subdivision.

18 The record reveals that the minimum economical agricultural  
19 unit in the area requires approximately 200-250 acres of land.  
20 The property is presently zoned as general agricultural (AG) with  
21 no minimum lot size provision. The subject property has most  
22 recently been a working cattle and sheep ranch (Livingston Ranch)  
23 which consists of stands of fir, oak and madrone, flat meadow  
24 land with more steeply rising property located on stream valleys.  
25 Of the total 860 acre Livingston Ranch, approximately 200 acres  
26 is bottom land on which feed for stock is raised and harvested.

1 This feed is used to supplement the feed available to grazing  
2 stock on the remaining portions of the ranch.

3 The applicants allege that the property in question should  
4 be classified forest lands and thereby subject to the goals and  
5 guidelines of the Forest Lands Goal, No. 4. Petitioners allege  
6 that the land is suitable for farm use and necessary to permit  
7 farm practices to be undertaken on adjacent or nearby lands.  
8 Petitioners argue that the subdivision removes the land from  
9 agricultural production and that the subdivision will put undue  
10 pressure on neighboring ranches and cause economic loss.  
11 Specifically economic loss would result from killing or weight  
12 loss of livestock due to the increased number of dogs in the area.  
13 Economic loss would also result from increased vandalism and  
14 trespass as well as additional need to maintain and construct  
15 fencing. Increased pressure on their operations would result  
16 from the increased population in the area which brings with  
17 it restrictions on necessary activities such as fertilizer  
18 and herbicide application.

19 Petitioners allege that the AG zone has not been acknowledged  
20 by LCDC as in compliance with Goal 3 nor has Douglas County's  
21 Comprehensive Plan been acknowledged. Therefore, petitioners  
22 argue Douglas County must apply Goal 3 to subdivisions on land  
23 zoned AG. Petitioners argue this requirement requires a finding  
24 that the lot sizes created by the subdivision are sufficient for  
25 the continuation of the existing commercial agricultural enter-  
26 prise in the area.

1 Applicants, on the other hand, argue this property is more  
2 appropriately designated as Goal 4, forestry land, and entered  
3 evidence into the record supporting their contention. Goal 4  
4 lands do not contain a stated minimum lot size requirement.  
5 All parties agree that this is overlapping land in that it  
6 meets the definitions of both agriculture and forest land.

7 Respondent Douglas County in its adopted Finding No. X  
8 found:

9 "The 40-plus acre plots would encourage and  
10 permit more intensive management and use of the  
11 timber potential for the property. The 40-acre  
12 parcels would encourage high intensive forest  
13 management activities. The County encourages  
14 the development of small woodland forest tracts  
15 and the timber base of the area would not only be  
16 preserved, but, in fact, would be improved. Agri-  
17 cultural lands would also be protected. The subject  
18 request appears to conform to the summary of  
19 applicable area Goals and Objections Nos. 9 and  
20 11, of the Comprehensive Plan."

21 In reviewing the application for conformance with LCDC  
22 Goals and Guidelines, Douglas County at page 8 of its adopted  
23 Findings of Fact states:

24 "Viewing the twelve parcels in their entirety  
25 will identify them as 'overlapping lands' which  
26 meet both the agricultural and forest land  
27 definitions. Based upon all the testimony but  
28 more particularly the testimony of Rufus Cate,  
29 we find the property has low soil fertility,  
30 is more suitable for timber growing than grazing,  
31 climatic conditions are favorable to timber,  
32 there is lack of any irrigation potential, the  
33 existing land use patterns in the area are timber,  
34 the adjacent lands are commercial forest lands,  
35 there is a definite need for commercial forest  
36 lands in Douglas County, and there is a need for  
37 watershed protection and protection of vegetive cover,  
38 and urban buffers. Therefore, the Commission finds

1 that the use of the twelve parcels as forest lands  
2 is preferred over the use of said lands as agri-  
3 cultural lands. The proposed twelve lots are at  
4 best marginal agricultural land for livestock  
5 grazing. The factors, however, more strongly  
6 support their use as forest land."

#### 7 DECISION

##### 8 First Assignment of Error

9 The threshold question in this case is whether LCDC  
10 Goal 3 or Goal 4 controls the use to which the subject property  
11 is to be put. The applicants in effect are arguing that in  
12 determining soil class for purposes of deciding whether Goal 3  
13 or Goal 4 is to be applied in this case the only soil that must  
14 be considered is that making up the 480 acres which they desire  
15 to further subdivide into 12 parcels. Since the land has most  
16 recently been used as a commercial agricultural enterprise it  
17 must, however, be viewed as an entity and any decision must  
18 take into consideration the soil on the entire 860 acres rather  
19 than just the 480 acres as applicant argues. When the land in  
20 question is part of a larger parcel, the farm as a whole  
21 must be examined to determine if it is predominantly Class  
22 I-IV soils. Meyer v. Lord, 37 Or App 59, 586 P2d 367 (1978).

23 Respondent Douglas County's findings relating to the  
24 subject property indicate predominantly Class IV and VI soil.  
25 Such a finding is not supported by a review of the record.  
26 The record indicates that approximately 78 percent of the  
860 acre subject property contains Class II, III, and IV  
soils. Thus, the farm as a whole contains predominantly

1 Class I-IV soils and is by definition agricultural land,  
2 therefore, Goal 3 applies to the subdivision.

3 Douglas County found that the property was more suitable  
4 for timber growing than grazing and that the use of the twelve  
5 40-acre parcels as forest land is preferred over the use of  
6 said land as agricultural lands. In doing so, however, it  
7 failed to find that the 40-acre lots will allow for the con-  
8 tinuation of the existing commercial agriculture enterprise  
9 within the area. Meeker v. Clatsop County, 287 Or 665 (1979);  
10 Jurgenson v. Union County Court, 42 Or App 505 (1979). In  
11 fact, the evidence shows that 40-acre lots will not allow  
12 for continuation of commercial agricultural activity on the  
13 subject property because the minimum viable commercial  
14 agricultural unit in the North Umpqua area requires 200-250  
15 acres. Even if the minimum lot size standard of Goal 3 were  
16 met, i.e. 40 acres could continue the commercial agricultural  
17 enterprise of the area, respondents failed to properly con-  
18 sider or make findings regarding the impact of the subdivision  
19 on adjacent or nearby lands.

20 That portion of Douglas County's Finding No. X, as  
21 previously set forth which states that "agriculture land would  
22 also be protected" is not supported by substantial evidence in  
23 the record. To the contrary, petitioners, introduced substantial  
24 and uncontroverted evidence that the subdivision would not permit  
25 agricultural practices to be undertaken on adjacent or nearby  
26 lands. Neighboring property owners testified both orally and

1 by letter that to subdivide the property into 40-acre parcels  
2 would put heavy adverse pressure on their grazing and ranching  
3 operations. Therefore, petitioners first assignment of error  
4 is sustained.

5 Second Assignment of Error

6 Respondents rely on the LCDC policy paper entitled  
7 "Agricultural/Forestry Goals Interrelationship" in making the  
8 determination that the proposed subdivision be allowed. Respon-  
9 dents' reliance on this policy paper is misplaced for two reasons.  
10 First, the interrelationship paper is a statement of policy intended  
11 to be used in the formulation of comprehensive plans rather than  
12 to be applied on a case by case basis in quasi-judicial pro-  
13 ceedings. Second, even if the paper were to be used as basis  
14 for quasi-judicial decision making it makes it clear that prior  
15 to acknowledgment of their comprehensive plan, Respondent County  
16 must provide adequate protection to conserve overlapping lands  
17 as a resource base for the future. As the interrelationship  
18 paper indicates:

19  
20 "In many instances, overlapping lands (Class  
21 I-IV (I-VI) soils) will be designated for forest  
22 uses. There is no conflict with Goal 3 if adequate  
23 protection is provided those lands. The intent of  
24 any protective mechanism should be to provide an  
25 area where forest and agricultural practices can  
26 occur without interference in order to conserve  
resource lands for the future. Protection of  
overlapping lands with Class I-IV (I-VI) soils  
can be accomplished using the following procedures:

1           "1. Proper Zoning. Forest uses described in  
2 Goal 4 should be permitted outright. Overlapping  
3 lands without a clear distinction or suitability  
4 for either agricultural or forest uses should  
5 allow for the uses identified in Goals 3 and 4."  
6 LCDC Agricultural/Forestry Goals Interrelationship  
7 Paper, p. 2 (undated).

8           In viewing this interrelationship paper as a statement of  
9 policy rather than specific guidelines or regulation, it indicates  
10 an intention by LCDC to leave lands which fall into the overlapping  
11 category in a condition where one use of the lands does not pre-  
12 clude an alternative use of the lands. More specifically under  
13 the Proper Zoning section, as above quoted, it is important to  
14 look at that portion of the policy paper which states:

15                   "Overlapping lands without a clear distinc-  
16 tion or suitability for either agricultural or  
17 forest uses should allow for the uses identified  
18 in Goals 3 and 4." (Emphasis added.)  
19

20           There was no showing by the applicants nor was there a  
21 finding by Respondent Douglas County that the proposed 40-acre  
22 lots would allow for the continuation of agricultural activity  
23 on the lands. The interrelationship paper stresses flexibility  
24 in order to conserve the resource lands for the future, flexi-  
25 bility which would be destroyed if the only future use that  
26 could be made of this property was that of small woodlands.  
27 As an overlapping land, both agricultural and forest uses  
28 must be protected. The evidence shows that a minimum of  
29 200-250 acres of land is necessary for a viable agricultural  
30 unit to exist in the North Umpqua area. The applicants'  
31 proposal precludes the use of the property as anything but

1 40-acre woodlands.

2 For the above stated reasons, it is the opinion of  
3 this Board that Respondent Douglas County's approval of the  
4 Colliding River Ranches Subdivision be reversed. To allow  
5 this subdivision is to flirt with a domino effect of like  
6 subdivision on the surrounding agricultural land. In light  
7 of this decision, it is not necessary to reach petitioners'  
8 other assignment of error.

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