

OCT 8 3 22 PM '82

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

1  
2  
3 PUBLISHERS PAPER CO., )  
4                   Petitioner,                    )  
5 STUART and CAROL HEMPHILL,                    )  
6                   Petitioners-Intervenors        )  
7                   v.                                    )  
8 BENTON COUNTY,                                    )  
9                   Respondent,                    )  
10 JOHN L. and TAMMY T. WILLIAMS,                )  
11                   Respondents-Applicants.            )

LUBA No. 82-035

FINAL OPINION  
AND ORDER

12  
13 Appeal from Benton County.

14 David G. Frost, Hillsboro, filed the Petition for Review  
15 and argued the cause on behalf of Petitioner Publishers Paper  
Company.

16 Richard P. Benner, Portland, filed the Petition for Review  
17 and argued the cause on behalf of Petitioners-Intervenors  
Hemphills.

18 Richard T. Ligon, Corvallis, filed the brief and argued the  
19 cause on behalf of Respondent Benton County.

20 John L. and Tammy T. Williams, Philomath, filed the brief  
and argued the cause on their own behalf.

21 REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee;  
22 participated in this decision.

23 Affirmed.

10/08/82

24 You are entitled to judicial review of this Order.  
25 Judicial review is governed by the provisions of Oregon Laws  
26 1979, ch 772, sec 6(a).

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Benton County granted approval for a dwelling in the  
4 county's forest zone (FC - 40 acre minimum lot size), for a  
5 27.4 acre parcel. The parcel is owned by the owner of a  
6 contiguous 6.9 acre parcel which already has a residence. The  
7 findings indicate the following about creation of these parcels:

8 "The parcel was first created in 1967 when Tax Lot 300  
9 was sold separately from Tax Lots 400 and 401 (M-6920,  
10 M-2020, M18159, CS 4373). In April of 1975, Tax Lots  
11 300 and 400 were sold as one parcel (M-55011) and have  
12 been described under one deed since that time. The  
13 parcel to the east is held in the same ownership as  
14 the subject property and contains the owner's  
15 residence. The applicants are negotiating to purchase  
16 the subject parcel on contract."1

13 The county found that the predominant soil type on the 27.4  
14 acre parcel "is Jory silty clay loam with a forest site Class  
15 2." The county further found "the soil is well suited for  
16 timber production."

17 The findings state the 27.4 acre parcel was selectively  
18 logged in 1978. The present owner was found to have neither  
19 the financial nor physical resources to conduct "good forest  
20 management practices" on the property (both parcels). The  
21 applicants have expressed their intention to intensively manage  
22 the property for forest purposes, but can only do so  
23 economically if allowed to erect a dwelling and live on the  
24 property. The county found the applicants were sincere and  
25 qualified to reforest the property. The county also found the  
26

1 27.4 acre parcel would not be incompatible with adjacent forest  
2 uses as the parcel would itself be used for such purposes. The  
3 county approved issuance of a permit conditioned upon the  
4 applicants' reforestation of nine of the 27.4 acres. The  
5 applicants submitted a management plan, but the management plan  
6 was not made a condition of the approval. The county did  
7 require that reforestation of the entire parcel occur before  
8 the end of 1987, although it is unclear what enforcement  
9 authority the county has to insure this condition is met. The  
10 county found the dwelling "could potentially increase the risk  
11 of fire." Issuance of the permit was, thus, conditioned upon  
12 the applicants' 1) maintenance of a 30' wide firebreak around  
13 the house; 2) installation of spark arresters for the chimney  
14 and fire retardant roof treatment; and 3) siting the house no  
15 closer than 300 feet from the south and west property lines.

16 Lands surrounding the 27.4 acre parcel, with the exception  
17 of the 6.9 acre parcel, are large ownerships in commercial  
18 forest production. Starker Forests owns 570 acres to the west,  
19 Publishers Paper owns 576 acres to the south, and Hull-Oakes  
20 Lumber Company owns 822 acres to the north.

21 In granting approval, the county applied numerous policies  
22 of the comprehensive plan as well as the requirements of its  
23 conditional use ordinance with which any forest dwelling in the  
24 FC zone must comply. The county did not address Goal 4  
25 directly, although the county's plan has not received  
26 acknowledgment. Respondents, however, argue the findings and

1 conclusions meet the requirements in Goal 4 applicable to  
2 allowing a dwelling in a forest zone.

3 NON-GOAL ISSUES

4 A. Petitioner Publishers Paper's Assignments of Error

5 1. Petitioner's First Assignment of Error

6 Petitioner's first assignment of error is as follows:

7 "The county's decision violates Article 4.12.3.b9 of  
8 the Benton County Comprehensive Plan by failing to  
9 prohibit or regulate a nonforestry use so as to avoid  
10 conflicts with forest harvest and management."

11 Article 4.12.3.b9 of the Benton County Comprehensive Plan  
12 (BCCP) provides that "Nonforestry uses shall be prohibited or  
13 regulated so as to mitigate any possible conflicts." In its  
14 argument, petitioner notes two types of conflicts which the  
15 county failed to mitigate: (1) conflicts for the homeowner who  
16 locates in a resource zone, which conflicts are caused by  
17 forest users; (2) conflicts for forest users which are caused  
18 by homeowners. Conflicts for homeowners identified by  
19 petitioner include noise, dust, visual changes, chemical uses,  
20 water quality impacts, and soil and vegetation disturbances  
21 caused by forest users. Petitioner argues the condition  
22 requiring a 300 foot setback imposed by Benton County will not  
23 lessen these conflicts for the applicants. Petitioner argues  
24 the conflict for forest users caused by homeowners is the  
25 increased fire hazard which a residence in a forest zone will  
26 cause. Again, petitioner argues the county's conditions do not  
"eliminate" the increased fire hazard caused by locating a

1 dwelling in a resource zone. Petitioner asserts that it "noted  
2 these resource-residence conflicts in testimony before the  
3 Benton County Planning Commission."

4 Our review of the record and, specifically, the testimony  
5 before the planning commission, does not reveal that the  
6 specific "conflicts" identified by petitioner were, in fact,  
7 raised by petitioner. The minutes of the planning commission  
8 meeting contain the following with respect to testimony by  
9 petitioner:

10 "Jim Denison, Division Forester for Publishers Paper,  
11 stated that he was concerned with homesite development  
12 in rural areas. He also expressed great concern with  
13 a request to develop a residence 30 feet from the  
14 property line due to windfalls, etc. from adjacent  
15 land and forest practices. He stated that forest land  
16 should be preserved for forest uses and certain lands  
17 can grow trees and those lands should be preserved for  
18 timber growth for future generations. He stated he  
19 owns his personal tree farm and has a conflict with  
neighbors due to threats related to his management  
practices. Upon questioning, he stated Publishers has  
offered in the past to purchase this property,  
however, the applicant requests residential prices.  
He stated that two years ago litigation involved a  
right of easement use across this property. He stated  
that Publishers' property at this site is scheduled  
for reforestation and additional rehabilitation this  
coming year."

20 The county imposed a requirement that any dwelling be located  
21 at least 300 feet from the property line. The county further  
22 imposed conditions requiring a 30 foot firebreak around the  
23 dwelling and installation of chimney spark arresters and fire  
24 retardant material on the roof of the dwelling. Given the lack  
25 of testimony about conflicts, we believe the conditions imposed  
26 by the county cannot be said to be inadequate to "mitigate any

1 possible conflicts." We note that Oregon Laws 1981, ch 748,  
2 sec 10(a)(1) provides that "A party appealing a land use  
3 decision made by a local government to the board or commission  
4 has the burden of persuasion." Petitioner has failed to  
5 persuade this board that the county misapplied Article  
6 4.12.3.b9 of the Benton County Comprehensive Plan.

7 2. Petitioner's Second Assignment of Error.

8 "The county's decision violates Article 111.04(2) of  
9 the Benton County Zoning Ordinance by permitting a use  
10 incompatible with surrounding land uses, with the  
potential to seriously interfere with forest practices  
on adjacent lands."

11 Benton County's findings in this case set forth criteria  
12 under Article III.04(2) which must be met in order to locate a  
13 forest related residence within the forest zone. These  
14 criteria are that the dwelling

15 "a. Is compatible with existing forest uses;

16 "b. Does not seriously interfere with accepted forest  
17 practices on adjacent lands;

18 "c. Does not alter the stability of the surrounding  
land use patterns;

19 "d. Is situated on lands least suitable for forest  
20 production considering the terrain, adverse soils  
or land conditions, drainage and flooding,  
21 vegetation, location and size of tract, and the  
cost of roads, power and telephone lines;

22 "e. Prior to construction of a residence, a covenant  
23 recognizing resource use and big game migration  
through the area is signed and recorded  
24 referencing the deed of record. Cumulative  
effects of dwellings on wildlife shall be  
25 considered;"

26 Petitioner argues that subsection (a) above was not

1 satisfied because forest dwellings are "inherently incompatible  
2 with commercial timber production." Petitioner again points  
3 out that the noise, dust and visual changes as well as the  
4 increased fire hazards are impacts which make a forest dwelling  
5 incompatible with forest uses in a resource zone.

6 As mentioned in discussing the first assignment of error,  
7 there is no evidence in the record in this case that such  
8 conflicts will arise. Absent evidence of such conflicts, we do  
9 not believe the county erred in concluding that the proposed  
10 use would be compatible with existing forest uses given the  
11 conditions which the county imposed on the proposed use. We do  
12 agree with petitioner, however, that the reason the county used  
13 for specifically finding the use would be compatible misses the  
14 point of the ordinance. The ordinance is concerned with  
15 whether the proposed use will be compatible. The proposed use,  
16 in this case, is a dwelling. The county did not, in its  
17 discussion under subsection (a) of Article III.04(2) talk about  
18 compatibility of the dwelling, but instead focused on whether  
19 the use of the 27.4 acre parcel would be compatible with  
20 surrounding uses. The county reasoned that the proposed use  
21 would be compatible because it consisted of the same use  
22 (forestry-management) that was taking place on surrounding  
23 lands. However, we do not believe the fact the county reasoned  
24 incorrectly in concluding the use would be compatible is  
25 grounds for reversal or remand in this case. In its discussion  
26 under subsection (b) of Article III.04(2), the county found

1 "Condition 6 for approval of this request requires  
2 placement of the dwelling over 300 feet from both the  
3 south and west property lines. No evidence was  
4 presented which would indicate that the proposed  
5 residence would adversely impact directly on the  
6 adjoining forest parcels other than publishers  
7 testimony generally that it opposed placement of  
8 dwellings in forest zones due to possible conflicts  
9 between forest and residential uses. Creeks  
10 separating the subject property from the Starker  
11 Forest property to the west, and bordering highway 20  
12 to the north, will lessen potential herbicide spray  
13 conflicts because the Forest Practices Act prevents  
14 spraying next to streams. The board concludes that  
15 the proposed residence will not interfere with  
16 adjoining timber production."

17 We believe, given the evidence, the above findings support  
18 the county's conclusion that the dwelling will be compatible  
19 with existing forest uses as well as the county's conclusion  
20 that the dwelling would not seriously interfere with accepted  
21 forest practices on adjacent lands.

22 Petitioner also argues that subsection (b) of Article  
23 III.04(2) was not properly addressed by the county. Again,  
24 given the county's finding quoted above, and the lack of  
25 evidence in the record concerning specific interference which  
26 the applicant's residence might cause to accepted forest  
practices on adjacent lands, we conclude subsection (b) of  
Article III.04(2) was not violated by the county.

Petitioner argues that subsection (c) of Article III.04(2)  
requiring a finding that the proposed use "does not alter the  
stability of the surrounding land use patterns" was not  
properly applied by the county. Petitioner argues that the  
dwelling "increases residential pressure on forest areas" and

1 "advances the potential for similar dwellings on small lots to  
2 encroach upon resource zones." Petitioner further states  
3 "location of the dwelling will attract more residences on  
4 similar sites to the detriment of large lot forest management  
5 operations." We assume that petitioner is asking us to take  
6 some form of judicial notice of these facts. We decline to do  
7 so. We have been unable to find any evidence in the record to  
8 support petitioner's concerns. Petitioner has failed to  
9 persuade us that subsection (c) of Article III.04(2) has been  
10 violated by the county.

11 Petitioner argues subsection (d) of Article III.04(2) was  
12 not met because the findings do not state the the proposed  
13 building site is "least suitable for forest production."  
14 Petitioner argues the county only identified the proposed  
15 building site as "rational" in light of building constraints on  
16 the rest of the property, and gave no analysis of productivity  
17 potential of the building site itself.

18 As petitioner asserts, the county in its discussion of  
19 subsection (d) did address the suitability of the site for  
20 development as opposed to the suitability of the site for  
21 timber production. However, in the context of other findings  
22 made by the county, we do not believe this misdirected  
23 discussion under subsection (d) is error. The county found  
24 that all of the soil on the property was Jory silty clay loam,  
25 with a forest site Class 2 for Douglas Fir production. The  
26 inference which this finding creates is that all areas of the

1 parcel are equally suited for timber production. Petitioner  
2 has not pointed to any evidence in the record which would  
3 indicate that this inference is misplaced. We are, again, not  
4 persuaded that subsection (d) of Article III.04(2) was  
5 misapplied by the county.

6 Petitioner notes that subsection (e) of Article III.04(2)  
7 was addressed by the county. We do not understand petitioner  
8 to be contending the county violated this subsection of the  
9 zoning ordinance.

10 Petitioner also argues under this assignment of error that  
11 the county erred in treating this conditional use request as  
12 one for a nonforest dwelling under Article III.04(3) of the  
13 county's zoning ordinance. According to petitioner, the county  
14 recognized that it was approving, in effect, a forest related  
15 dwelling on a substandard lot inasmuch as the minimum lot size  
16 for allowing a dwelling under Article III.04(2) is 40 acres.  
17 Having recognized that the request was one for a forest related  
18 dwelling, albeit on a substandard lot, petitioner contends the  
19 county erred in then treating the request as one for a  
20 nonforest dwelling under Article III.04(3).

21 It is our understanding of the Benton County Zoning  
22 Ordinance that Article III.04(2) is only applicable when a  
23 request for a dwelling is made on a parcel 40 acres or larger  
24 in size. As it turns out in this case, however, the county is  
25 still required to address the criteria contained in Article  
26 III.04(2) because these criteria are also applicable for a

1 nonforest dwelling, that is, a dwelling on a parcel less than  
2 40 acres in size. Article III.04(3) adds one additional  
3 requirement, however, which is that the dwelling "is located at  
4 a minimum of 300 feet from contiguous property zoned for  
5 resource use (EFU or FC) \* \* \* \*" This condition was satisfied  
6 by the county's imposition of a 300 foot setback requirement.  
7 While the county, therefore, erred in treating this conditional  
8 use request as one for a forest related dwelling, that fact is  
9 of no moment because the criteria which the county addressed  
10 were the same as those for a nonforest dwelling, with the  
11 addition noted above. We have not been persuaded the county  
12 erred in applying those criteria.

13 The petitioner further argues in this assignment of error  
14 that the county's decision violates the review criteria for  
15 conditional uses contained in XX.05.2 of the county's zoning  
16 ordinance. The petitioner states that for the reasons cited by  
17 the petitioner the proposed use is not consistent with the  
18 comprehensive plan and compatible with surrounding land uses as  
19 required by Article XX.05.2. Because we disagree with  
20 petitioner's assertions concerning the comprehensive plan and  
21 compatibility of the proposed use with surrounding land uses,  
22 we conclude Article XX.05.2 of the zoning ordinance was not  
23 violated.

24 Petitioner finally argues under this assignment of error  
25 that the county violated its zoning ordinance in not finding  
26 that the forest dwelling "is necessary for management of

1 timberlands." Article 1.03.13 defines "dwelling in conjunction  
2 with forest uses" as one that is "necessary" for management of  
3 timberlands. The county argues that this is only a definition  
4 of "dwelling in conjunction with forest use" and is not a  
5 standard which must be applied by the county in order to  
6 approve a dwelling on forest lands. While we tend to agree  
7 with the county that this is a definition and not a standard,  
8 in any event the definition of "dwelling in conjunction with  
9 forest use" would only have application if a dwelling permit  
10 were requested under Article III.04(2) (i.e., forest dwelling)  
11 rather than Article III.04(3) (i.e., nonforest dwelling). As  
12 previously stated we believe the county was required to treat  
13 the applicant's request as one for a nonforest dwelling under  
14 Article III.04(3). The definition for a forest dwelling or  
15 dwelling in conjunction with forest use would not appear to  
16 have any application.

17 Petitioner's second assignment of error is denied.

18 3. Petitioner's Fourth Assignment of Error.

19 Petitioner's fourth assignment of error is that the  
20 county's findings are basically conclusions and not supported  
21 by substantial evidence. Petitioner's attack is focused on the  
22 county's conclusions. The adequacy of the county's conclusions  
23 to satisfy the criteria of the county's comprehensive plan and  
24 zoning ordinance has already, for the most part, been  
25 discussed.

26 We agree with petitioner that the county's section of its

1 order entitled "conclusions," although containing findings of  
2 fact, states those findings of fact in a conclusional fashion.  
3 However, we believe it is appropriate for the county to state  
4 findings of fact in a more conclusional form when there is no  
5 substantial evidence in the record from opponents addressing  
6 relevant criteria. Cf. Golf Holding Co. v McEachron, 39 Or App  
7 675, 593 P2d 1202 (1979). As previously discussed, there is no  
8 substantial evidence in this record about conflicts or  
9 incompatibility of the proposed use from the opponents of this  
10 conditional use request. Petitioner's concerns, as well as  
11 concerns of others who oppose the request, are stated in very  
12 general terms. The record does not reveal that there was any  
13 real dispute about factual issues. The minutes are all we have  
14 to review, and they certainly do not suggest that specific  
15 testimony was given by opponents concerning the criteria in the  
16 county's zoning ordinance. Under these circumstances, we  
17 cannot say the county was required to state, in detail, what  
18 facts it believed and why it believed the facts it did.

19 Petitioner's concern that the conclusional findings made by  
20 the county are not supported by substantial evidence is not  
21 stated in any detail. The best we can make of petitioner's  
22 argument is the assertion the applicant failed to produce  
23 substantial evidence showing the proposed use would be  
24 compatible with surrounding land uses. Without any evidence of  
25 incompatibility, we do not believe the applicant has a great  
26 burden of proof to demonstrate a proposed dwelling will be

1 compatible. Here, the zone itself requires the dwelling be  
2 located 300 feet from a property line. This requirement  
3 suggests a prior determination has been made by the county that  
4 a 300 foot buffer will help to reduce any conflicts which  
5 forest management of adjacent lands might create for the  
6 dwelling and vice versa. There was some testimony in the  
7 record about herbicide spraying and whether the ability to  
8 spray forest land would be adversely impacted by the existence  
9 of a dwelling in the area. The county found, however, that  
10 herbicide spraying should not cause a problem because

11 "Creeks separating the subject property from the  
12 Starker Forest property to the west, and bordering  
13 Highway 20 to the north, will lessen potential  
herbicide spray conflicts because the Forest Practices  
Act prevents spraying next to streams."

14 The above finding is not challenged as wanting in  
15 substantial evidence. Accordingly, we disagree with petitioner  
16 that there is a lack of substantial evidence to support the  
17 county's determination that the applicant's conditional use  
18 will be compatible with surrounding land uses.

19 4. Petitioner's Fifth Assignment of Error.

20 Petitioner's fifth assignment of error is as follows:

21 "The county's decision violates Article III.01 of the  
22 Benton County Zoning Ordinance, Article 4.12.3.b6 of  
23 the Benton County Comprehensive Plan, and Statewide  
Planning Goal 4 by failing to preserve forest land for  
the production of wood fibre."

24 Petitioner argues that placement of the dwelling on forest  
25 land will take forest land out of production. Petitioner  
26 further argues that it has not been demonstrated the dwelling

1 will "enhance forest management on the site; it merely provides  
2 a convenience for the owner." Petitioner argues the placement  
3 of the dwelling will influence forest management of adjacent  
4 lands and may result in decreased production.

5 As previously stated, there is no evidence to support some  
6 of petitioner's assertions. Placement of the dwelling on  
7 forest land will prevent the land underneath the dwelling from  
8 being utilized for forest uses. However, we do not believe the  
9 county's zoning ordinance and comprehensive plan, as written,  
10 preclude the placement of the dwelling on forest land. It is  
11 our understanding these ordinances do contemplate the placement  
12 of a dwelling on forest land if the criteria in the county  
13 zoning ordinance can be met. We have concluded that those  
14 criteria have been met and that, accordingly, there has been no  
15 violation of the county's plan or zoning ordinance.

16 Petitioner's contention that placing the dwelling on forest  
17 land does not retain forest land for forest uses in violation  
18 of Goal 4 is discussed, *infra*, under the goal issue section of  
19 this opinion.

#### 20 B. Intervenor-petitioner's Assignments of Error

21 Intervenor-petitioner Hemphill has asserted that the  
22 county's decision violated the county zoning ordinance in the  
23 following respects:

24 "Respondent violated its zoning ordinance by  
25 authorizing a 'dwelling in conjunction with forest  
26 use' without a demonstration or a finding that the  
dwelling is necessary for commercial management.

1 "Approval of a single-family residence in conjunction  
2 with forest use on a substandard parcel violates Art.  
3 III.04(2) and III.05 of the Benton County Zoning  
4 Ordinance.

5 "Respondent misapplied Art. III.04(2)(a) and  
6 III.04(3)(a); Respondent failed to find the residence  
7 is compatible.

8 "Respondent misapplied Art. III.04(2)(d) and  
9 III.04(3)(d); Respondent failed to find the site of  
10 the proposed residence is least suitable."

11 All of the above issues raised by intervenor-petitioner  
12 were raised by petitioner Publishers Paper Co. and have been  
13 addressed supra. We, accordingly, deny intervenor-petitioner's  
14 above quoted assignments of error.

#### 15 GOAL ISSUES

16 Petitioner, in assignments of error three and five, and  
17 intervenor-petitioner, in assignments of error III A and B,  
18 argue the approval of the conditional use permit violates Goal  
19 4. Petitioner argues the county did not address Goal 4  
20 directly and the county's findings do not answer Goal 4  
21 issues. Intervenor-petitioner argues the county violated Goal  
22 4 because the county failed to find, as required by the Goal,  
23 that the dwelling "is necessary for commercial forest  
24 production on the subject property." Intervenor-petitioner  
25 contends the county approved a non-forest dwelling on Class II  
26 forest land "suitable for commercial forest production" in  
violation of Goal 4.

Goal 4, Forest Lands, provides in part, as follows:

"Forest land shall be retained for the production

1 of wood fibre and other forest uses. Land suitable  
2 for forest uses shall be inventoried and designated as  
3 forest lands. Existing forest land uses shall be  
protected unless proposed changes are in conformance  
with the comprehensive plan.

4 \* \* \*

5 Forest Uses - are (1) the production of trees and the  
6 processing of forest products; (2) open space, buffers  
7 from noise, and visual separation of conflicting uses;  
8 (3) watershed protection and wildlife and fisheries  
9 habitat; (4) soil protection from wind and water; (5)  
maintenance of clean air and water; (6) outdoor  
recreational activities and related support services  
and wilderness values compatible with these uses; and  
(7) grazing land for livestock.

10 The county's finding that the soil on the property is  
11 predominantly Jory silty clay loam with a forest site Class 2  
12 and that the soil is well suited for timber production is not  
13 challenged by the parties. Based, therefore, on this finding,  
14 we conclude the 27.4 acre parcel is forest land within the  
15 meaning of Goal 4.

16 Goal 4 does not expressly, at least, recognize a dwelling  
17 on forest land as a forest use. In this respect, Goal 4 is to  
18 be distinguished from Goal 3 which expressly allows as a  
19 permitted use a residence in conjunction with farm use on  
20 agricultural land.<sup>2</sup> Nevertheless, LCDC has determined that  
21 in limited circumstances, a residence can be allowed on forest  
22 land. LCDC's most current statement of policy about allowing  
23 dwellings on forest land is that set forth in its determination  
24 in this case.<sup>3</sup> The determination is as follows:

25 "The Commission does not agree that a dwelling  
26 may be allowed under Goal 4 only if the dwelling is  
found to be necessary for forest management. LUBA's

1 [proposed] opinion was based on quoted sections of the  
2 DLCD acknowledgment report for Josephine County. One  
3 quoted section states:

4 " '...Dwellings are not a forest use  
5 specified in Goal 4, but the residence of the  
6 manager of a wood lot may be considered to be a  
7 necessary part of the general process of timber  
8 management' (LUBA Opinion, page 5, lines 2-4,  
9 emphasis added).

10 "The above quote should not be interpreted to  
11 mean dwellings must be considered necessary to timber  
12 management in order to be allowed on land zoned for  
13 forest uses. Whether a dwelling is necessary for  
14 forest uses is one test that, if met, is sufficient to  
15 approve the dwelling on forest land. If the dwelling  
16 cannot be demonstrated to be necessary for forest  
17 uses, it may still be allowed on land zoned for forest  
18 uses if it is found that forest land will be retained  
19 for forest uses despite the dwelling.<sup>1</sup>"

20 "1

21 "There are two categories of nonforest uses which may  
22 meet the Goal to retain forest land for forest uses.  
23 One, accessory uses are those uses incidental and  
24 subordinate to and customarily provided in conjunction  
25 with the forest use. Examples might include helipads  
26 and aggregate mining for forest roads. Accessory uses  
could be provided outright on lands zoned for forest  
use. The second category of nonforest uses are  
incompatible uses which if subject to standards under  
a review procedure may retain forest land for forest  
uses. Examples might include mineral extraction,  
personal airports, churches and dwellings. These uses  
have a potential of not retaining forest land for  
forest uses. Therefore they could only be allowed  
under conditions which assure:

27 "1. The proposed use is compatible with and will not  
28 significantly affect existing forest uses on the  
29 site or surrounding land;

30 "2. The proposed use will not interfere with forest  
31 operations and practices;

32 "3. The proposed use will not alter the stability of  
33 the overall land use pattern in the area; and

1 "4. The proposed use is consistent with forest  
2 policies in the comprehensive plan and the  
3 purposes of the zone."

4 We interpret this statement of policy as allowing a  
5 dwelling on forest land if 1) the dwelling is necessary for the  
6 general process of forest management, or 2) the dwelling a) is  
7 compatible with and will not significantly affect existing  
8 forest uses on the site or surrounding land; b) will not  
9 interfere with forest operations and practices; c) will not  
10 alter the stability of the overall land use pattern in the  
11 area; and d) is consistent with forest policies in the  
12 comprehensive plan and the purposes of the zone.

13 The findings do not show the dwelling meets the first of  
14 the alternative two part test set forth above. That is, the  
15 findings do not show the dwelling is necessary for the general  
16 process of forest management. The county's only finding which  
17 addresses this issue is the following:

18 "Further, in a situation where production on such  
19 smaller parcels will be increased if intensive  
20 management occurs, and a parcel has a history of  
21 remaining vacant, and an applicant acts to initiate  
22 intensive management, which economically is made  
23 feasible by being able to reside on the parcel, and it  
24 is demonstrated that a proposed homesite will not  
25 adversely affect adjoining forest practices, then the  
26 Board concludes that the location of a dwelling under  
such circumstances is appropriate." (Emphasis added).

27 The emphasized portion of this finding could be construed  
28 in two ways: 1) it would be economically feasible to  
29 intensively manage the 27.4 acres for forest purposes only if  
30 the owner is able to reside on the property, or 2) it would be

1 economically feasible for these applicants to intensively  
2 manage the property for forest purposes only if these  
3 applicants were able to reside on the property. Only the  
4 latter interpretation is supported by substantial evidence in  
5 the record. But these applicants' economic circumstances are  
6 not relevant to the issue of whether a dwelling is "a necessary  
7 part of the general process of timber management." There is no  
8 evidence or finding that someone other than these applicants  
9 would also require a dwelling as a necessary part of forest  
10 management of the 27.4 acres. The findings do not show the  
11 dwelling is a necessary part of the general process of forest  
12 management.

13 The second means by which a dwelling may be allowed on  
14 forest land has been met by the county, at least as we  
15 interpret that policy. First, it must be understood that so  
16 far as we are aware LCDC's policy, as expressed in its  
17 determination in this case, was not available as such to the  
18 county or the applicants at the time the county conducted its  
19 hearings or adopted its findings of fact. Thus, the county  
20 could not have adopted findings addressing this policy  
21 directly. We must, in fairness to the respondents, bear this  
22 factor in mind as we review the findings for conformance to the  
23 policy. We also believe, under these circumstances, any doubt  
24 we may have as to whether the policy has been satisfied by the  
25 county's findings should be resolved in favor of the  
26 respondents.

1 Factor (a) of this second test for allowing a dwelling  
2 requires that the dwelling "is compatible with and will not  
3 significantly affect existing forest uses on the site or  
4 surrounding land." It is not altogether clear whether the  
5 concern about the effect of the dwelling on "existing forest  
6 uses on the site" is a concern about the homesite itself or is  
7 a concern about the entire parcel. We believe LCDC probably  
8 intended the latter. First, reading LCDC's policy expressed in  
9 its determination as a whole, we believe LCDC intended to allow  
10 dwellings on forest land (as opposed to land zoned for forest  
11 uses which might include non-forest land) even though the  
12 dwellings are not necessary for forest management. Second, to  
13 say the dwelling may be located on forest land but only if the  
14 dwelling will not significantly affect or will be compatible  
15 with existing forest use of the land to be physically occupied  
16 by the dwelling would, in our view, take away any real  
17 opportunity to put a dwelling on forest land under this second  
18 of LCDC's enunciated two part test. Presumably, all  
19 undeveloped forest land has an existing forest use, whether it  
20 be production of trees, open space, watershed protection,  
21 wildlife habitat, etc. See definition of forest uses in Goal  
22 4, quoted supra at 17. A dwelling on forest land will, by its  
23 very nature be incompatible with and significantly affect those  
24 forest uses taking place on the land which the dwelling will  
25 physically occupy.

26 Thus, by "site," we believe the commission must have been

1 referring to the parcel as a whole. The inquiry is, therefore,  
2 whether the dwelling will be compatible with and will not  
3 significantly alter the existing forest uses on the parcel as a  
4 whole as well as on surrounding land. The findings in this  
5 case reveal the dwelling may have a positive impact on existing  
6 forest uses on the property. The applicants will be able to  
7 reside on the property and intensively manage the 27.4 acres  
8 for forest uses. The county has attached conditions to its  
9 approval of the conditional use permit which will, to some  
10 degree, insure the parcel will be reforested.

11 We have addressed in our discussion of petitioner's second  
12 assignment of error the question of whether the dwelling will  
13 be compatible with and not significantly alter the forest uses  
14 on surrounding lands. That analysis applies equally here. We  
15 conclude, therefore, the county's findings show the dwelling  
16 will be compatible with and will not significantly affect  
17 existing forest uses on the site or surrounding lands.

18 Factors (b), (c) and (d) of the second test for permitting  
19 a dwelling on forest lands have also been addressed previously  
20 in this opinion. Factor (b) is that the dwelling not interfere  
21 with forest operations and practices. This is essentially the  
22 same requirement as is imposed by Article III.04(2)(b) of the  
23 Benton County Zoning Ordinance. We said, addressing  
24 petitioner's second assignment of error, that the county's  
25 findings satisfied this requirement.

26 Factor (c) is that the dwelling not alter the stability of

1 the overall land use pattern in the area. This factor  
2 essentially mirrors the requirement in Article III.04(2)(c) of  
3 the county's ordinance. We addressed whether the county's  
4 findings satisfied this requirement in our discussion of  
5 petitioner's second assignment of error.

6 Factor (d) of the second test for permitting a dwelling on  
7 forest land is that the dwelling be consistent with forest  
8 policies in the comprehensive plan and the purposes of the  
9 zone. While this is a rather broad standard, we believe our  
10 analysis under the non-goal issues section of this opinion  
11 shows this factor has been met as well.

12 For the foregoing reasons, therefore, we conclude Benton  
13 County's approval of a conditional use permit for a dwelling  
14 located on forest land is consistent with LCDC's Goal 4 policy  
15 as expressed in its determination in this case.

16 CONCLUSION

17 Petitioner Publishers Paper and Intervenor-Petitioner  
18 Hemphill's assignments of error are denied. Benton County's  
19 issuance of a conditional use permit for a dwelling on forest  
20 land is affirmed.

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FOOTNOTES

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4 There is an issue in this case which did not surface at the  
5 local level and has not been raised here, but which causes us  
6 pause. That issue is whether the application in this case is  
7 for a second dwelling on a 34.3 acre parcel rather than a  
8 single dwelling on a 27.4 acre parcel. The 6.9 and 27.4 acre  
9 parcels are contiguous and appear to have been held in single  
10 ownership at the beginning of the calendar year. The  
11 applicants have entered into a contract to purchase the 27.4  
12 acres, but the record does not show a partitioning of the 27.4  
13 acre parcel from the 6.9 acre parcel has occurred this year.

9 ORS 92.010 defines "partition land" to mean

10 "...to divide an area or tract of land into two or  
11 three parcels within a calendar year when such area or  
12 tract of land exists as a unit or contiguous units of  
13 land under single ownership at the beginning of such  
14 year."

13 Absent a partitioning and approval by the county of a tentative  
14 plan, we doubt the applicants can legally purchase the 27.4  
15 acres. See ORS 92.016. We also doubt the county may treat the  
16 request as an application for a single dwelling on 27.4 acres  
17 rather than for a second dwelling on 34.3 acres.

16 However, the issue of whether the 34.3 acres are, under ORS  
17 92.010, a single parcel or two parcels has not been briefed or  
18 argued. And we are not the proper forum to review the validity  
19 of the applicants' contract to purchase the 27.4 acres.  
20 Therefore, despite our serious doubts expressed above, we will  
21 for purposes of our review, treat the application as one for a  
22 single dwelling on a 27.4 acre parcel.

20 2

21 Goal 3's purpose is to preserve agricultural land for farm  
22 use. "Farm use" is as set forth in ORS 215.203 and includes  
23 non-farm uses permitted in ORS 215.213. ORS 215.213(1)(f)  
24 allows establishment of dwellings and other buildings  
25 customarily provided in conjunction with farm use.

24 3

25 On August 2, 1982, LUBA issued its recommendation to the  
26 commission in the above captioned matter. The recommendation  
27 stated Benton County's approval of a dwelling on forest land

1 was contrary to Goal 4 because no showing had been made that  
2 the dwelling was necessary for management of the property for  
3 forest uses. LCDC reviewed the proposed opinion, but concluded  
4 that the necessity test was too strict an application of Goal  
5 4. LUBA requested clarification of LCDC's determination in a  
6 memo to the commission dated August 27, 1982. Specifically,  
7 LUBA wanted to know whether the necessity test was the only  
8 test for allowing dwellings on forest land, as opposed to land  
9 zoned for forest uses. LCDC's determination was clear the  
10 necessity test was not the only test for allowing dwellings on  
11 land zoned for forest uses. LCDC revised its determination on  
12 October 6, 1982. LCDC directed LUBA "to apply the Goal 4  
13 standard as identified [in the determination] to the facts in  
14 this case and determine whether Benton County's decision  
15 complies with Goal 4."  
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