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

DEPARTMENT OF LAND CONSERVATION )  
AND DEVELOPMENT, )  
Petitioner, )  
vs. )  
CURRY COUNTY, )  
Respondent. )

LUBA No. 96-073  
FINAL OPINION  
AND ORDER

Appeal from Curry County.

Celeste J. Doyle, Assistant Attorney General, Salem, filed the petition for review on behalf of petitioner. With her on the brief was Theodore R. Kulongoski, Attorney General, Thomas A. Balmer, Deputy Attorney General, and Virginia L. Linder, Solicitor General.

No appearance by respondent.

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

REMANDED 08/29/96

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

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the board of county  
4 commissioners amending the county comprehensive plan  
5 designation of 32.20 acres from Forest Grazing to Rural  
6 Residential and the zoning map designation from Forestry-  
7 Grazing (FG) to Rural Residential-5 (RR-5).

8 **FACTS**

9 We adopt petitioner's statement of the facts, omitting  
10 record citations:

11 "The subject property is a vacant 23.2 acre parcel  
12 described as Tax Lot 100 on the Curry County  
13 Assessor's Map No. 36-14-29DB. The property is  
14 bordered on the east and north by the urban growth  
15 boundary (UGB) of the City of Gold Beach, and on  
16 the west and south by large parcels zoned and  
17 managed for farm and forest uses. The property is  
18 moderately to steeply sloped (30-70% slopes), and  
19 'is covered with some mixed trees.' County staff  
20 concluded that the subject property 'is  
21 essentially identical with respect to terrain,  
22 soil type, location etc. as the lands lying to the  
23 south and east, which are currently being used as  
24 forest resource land. The subject property  
25 currently has a mixed stand of timber much the  
26 same as has been harvested from adjacent forest  
27 lands.'" Petition for Review 2.

28 After public hearings, the board of commissioners  
29 adopted the challenged decision. This appeal followed.

30 **FIRST ASSIGNMENT OF ERROR**

31 Petitioner contends the county's determination that the  
32 subject property is not Goal 4 forest land violates Curry  
33 County Zoning Ordinance (CCZO) 9.031, which provides, in

1 relevant part:

2 "The Board shall determine that requests for  
3 comprehensive plan amendments prove that land  
4 planned and zoned for resource land meets the  
5 following standards:

6 "1. The subject property does not meet the  
7 definition of Agricultural Land under  
8 Statewide Planning Goal 3 and/or Forest Land  
9 under Statewide Planning Goal 4;

10 "Note: If the subject property is  
11 predominately Class I-IV soils or if it  
12 predominately consists of soils capable of  
13 producing 50 cubic feet of wood fiber per  
14 acre per year it is not considered to be  
15 nonresource land.

16 "\* \* \* \* \*"

17 In addressing CCZO 9.031, the challenged decision finds  
18 "the predominate [sic] soils are not Class I-IV and are not  
19 capable of producing 50 cubic feet of wood fiber per acre  
20 per year." Record 16. Petitioner contends this finding is  
21 inadequate, as it does not address the definition of forest  
22 land found in Goal 4. Petitioner also contends the county  
23 has misapplied the above-quoted "Note" by inferring that  
24 soils not capable of producing 50 cubic feet of wood fiber  
25 per acre per year cannot be considered to be resource land.

26 We agree with petitioner on both points. The county  
27 has misapplied the Note. To satisfy CCZO 9.031 as it  
28 addresses Goal 4, the county's findings must show the county  
29 has applied the Goal 4 definition of forest land to  
30 determine whether the applicant below has proven the subject  
31 property is not forest land.

1           The first assignment of error is sustained.

2       **SECOND ASSIGNMENT OF ERROR**

3           Petitioner contends the county's conclusion that the  
4 subject property is not capable of producing more than 50  
5 cubic feet of wood fiber per acre per year is not supported  
6 by substantial evidence.

7           The challenged decision states that the board of  
8 commissioners "relied heavily" on the testimony and data  
9 submitted by a "Professional Soil Scientist." Record 12.  
10 The soil scientist finds soils on the property to be  
11 Bullgulch-Hunterscove (with inclusions of other soils) and  
12 notes that over a 50-year period, Bullgulch-Hunterscove  
13 soils are capable of producing 195 (Bullgulch) and 197  
14 (Hunterscove) cubic feet of wood fiber per acre per year.  
15 Record 116. Nevertheless, he concludes that the conifers on  
16 the site produce 50 to 80 cubic feet of wood fiber per acre  
17 per year in gently sloping areas and less than 50 cubic feet  
18 of wood fiber per acre per year in more steeply sloping  
19 areas, which comprise most of the subject property. Record  
20 113. In a later report, he attributes the property's low  
21 productivity to "the many inclusions of extremely steep,  
22 shallow, scarp areas," which are covered by "nearly  
23 impenetrable Red alder thickets." Record 144.

24           Petitioner challenges the soil scientist's credentials  
25 as a forester capable of determining forest productivity,  
26 and contends that "conclusions about actual wood fiber

1 production \* \* \* require a study of the growth of the trees  
2 on site and no such study was done \* \* \*." Petition for  
3 Review 6.

4 We are authorized to reverse or remand the challenged  
5 decision if the county made a decision not supported by  
6 substantial evidence in the whole record. ORS  
7 197.835(7)(a)(C). Substantial evidence is evidence a  
8 reasonable person would rely upon in reaching a decision.  
9 City of Portland v. Bureau of Labor and Ind., 298 Or 104,  
10 119, 690 P2d 475 (1984); Douglas v. Multnomah County, 18 Or  
11 LUBA 607, 617 (1990). In determining whether a decision is  
12 supported by substantial evidence, we consider all the  
13 evidence in the record to which we are cited, including  
14 evidence which refutes or detracts from that relied on by  
15 the local government decision maker. Younger v. City of  
16 Portland, 305 Or 346, 360, 752 P2d 262 (1988).

17 The soil scientist explains the lower-than-expected  
18 forest productivity on the subject property by reference to  
19 steep slopes and shallow soils. However, his resume,  
20 included in the record at 142, does not establish his  
21 qualifications to determine forest productivity. Moreover,  
22 since the only scientific data in the record of which we are  
23 aware are the results of the soil tests, the soil  
24 scientist's conclusions with respect to forest productivity

1 appear to be based on speculation.<sup>1</sup> We do not find the soil  
2 scientist's conclusions to be substantial evidence upon  
3 which a reasonable person would rely to determine that the  
4 forest productivity on the property as a whole is less than  
5 50 cubic feet of wood fiber per acre per year.

6 The second assignment of error is sustained.

7 **THIRD ASSIGNMENT OF ERROR**

8 **A. CCZO 9.021(2)**

9 CCZO 9.021(2) requires a finding that rezoning the  
10 subject property "will not seriously interfere with the  
11 permitted uses on other nearby parcels." In response, the  
12 challenged decision finds "The subject property is presently  
13 surrounded by Residential use. There can be no conflict  
14 with nearby permitted uses on nearby land." Record 15.  
15 Petitioner contends the first sentence of the finding is not  
16 supported by substantial evidence, and the second sentence  
17 is both not supported by substantial evidence and  
18 unacceptably conclusory.

19 We agree with petitioner that the first sentence of the  
20 quoted finding is not supported by substantial evidence, in  
21 that it contradicts all of the evidence in the record. An  
22 attached map, incorporated by reference, and a zoning table

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<sup>1</sup>The failure of the county or the applicant below to appear in this proceeding makes an evaluation of petitioner's substantial evidence challenge difficult. A letter in the record from neighbors of the subject property states it was logged approximately three years ago. Record 141.

1 incorporated in the findings, show the property to be  
2 adjacent to land zoned FG on both the east and south.  
3 Record 4, 10. To the extent the second sentence relies on  
4 the first sentence, it also is not supported by substantial  
5 evidence.

6 Findings must not only identify the relevant approval  
7 standards, but also set out the facts which are believed and  
8 relied upon and explain how those facts lead to the decision  
9 on compliance with the approval standards. Sunnyside  
10 Neighborhood v. Clackamas Co. Comm., 280 Or 3, 20-21, 569  
11 P2d 1063 (1977); Vizina v. Douglas County, 17 Or LUBA 829,  
12 835 (1989). To the extent the second sentence adds to the  
13 first sentence, it is simply a conclusion which fails to  
14 explain why possible conflicts, clearly recognized by CCZO  
15 9.021(2), between resource and non-resource uses will not  
16 occur in this case. It is therefore defective as a finding.

17 **B. CCZO 9.031**

18 Petitioner contends the county's findings with respect  
19 to CCZO 9.031(3), (4) and (6), criteria that pertain to  
20 whether the subject property is resource land, are both (1)  
21 defective because unacceptably conclusory; and (2) either  
22 not supported by substantial evidence in the record or  
23 directly contradicted by substantial evidence in the record.  
24 Even a cursory reading of the findings addressing CCZO  
25 9.031(3), (4) and (6) shows that petitioner's contentions  
26 are correct.

- 1 The third assignment of error is sustained.
- 2 The county's decision is remanded.