BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, the assumed name of Oregon Land Use Project, Inc. and HOOD VIEW NEIGHBORHOOD ASSOCIATION, Petitioners, vs. BOARD OF COMMISSIONERS OF CLACKAMAS COUNTY, HERBERT D. RUSTRUM, BETTY HEININGE, CARL M. HALVORSON, INC. GENE L. WILHELM AND JACQUELINE J. WILHELM, Respondents.	LUBA NO. 80-060 FINAL OPINION AND ORDER

Appeal from Clackamas County.

Richard P. Benner, Portland, filed a petition for review and argued the cause on behalf of Petitioner 1000 Friends of Oregon.

Frank Josselson, Portland, filed a petition for review and argued the cause on behalf of Petitioner Hood View Neighborhood Association. With him on the brief were Lang, Klein, Wolf, Smith, Griffith & Hallmark. (Areas No. 8 and 9)

Michael E. Judd, Oregon City, filed a brief and argued the cause on behalf of Respondent Clackamas County.

Sally C. Landauer and Jack Orchard, Portland, filed a brief and argued the cause for Respondent Rustrum. With them on the brief were O'Connell, Goyak & Ball, P.C. (Portions of Area No. 4)

Mark P. O'Donnell, Portland, filed a brief and argued the cause for Respondent Heininge. With him on the brief were O'Donnell, Rhoades, Gerber, Sullivan & Ramis. (Area No. 11)

Garry P. McMurry, Portland, filed a brief and argued the cause for Respondent Halvorson. With him on the brief were Rankin, McMurry, Osburn, VavRosky & Doherty. (Areas No. 6, 8 and 9)

COX, Referee; REYNOLDS, Chief Referee; BAGG, Referee; participated in the decision.

Remanded. 8/05/81

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

COX, Referee.

NATURE OF PROCEEDING

Petitioner 1000 Friends contends that Clackamas County Board of Commissioners Order No. 80-828 violates Statewide Planning Goals 2, 3 and 4. Order No. 80-828 amended Clackamas County's comprehensive plan and adopted rural zoning designation on approximately 2,812 acres in rural (outside urban growth boundaries) Clackamas County. Petitioner 1000 Friends contends that approximately 2,250 acres of the property affected by the contested order meet goal definitions of agricultural and forest land and the county's designation of those lands for non-farm and non-forest use is in error.

Petitioner Hood View Neighborhood Association seeks review of that portion of Order No. 80-828 which relates to approximately 476 acres of the above identified approximate 2,250 acres. Petitioner Hood View Neighborhood Association directs its petition for review at an area known as Pleasant Hill and West Pleasant Hills. Both petitioners request this Board to declare the contested portions of Order No. 80-828 invalid.

STANDING

The standing of Petitioner 1000 Friends was contested by Respondent Heininge. The decision in favor of 1000 Friends was included in a separate ruling of this Board.

ALLEGATIONS OF ERROR

Petitioners argue in general that the exceptions taken by

respondent on ten specific areas of land violate Statewide Goals 2, 3 and 4 as follows:

> "(1) the exceptions violate Goal 2 because they fail to show, with compelling reasons and facts, that it is no longer possible to manage the lands for farm or forest use; the record shows neither that the lands are irrevocably committed to, nor that they are needed for nonfarm and nonforest use;
>
> "(2) the exceptions violate Goal 3 because they designate agricultural land for nonfarm use without a proper exception;
>
> "(3) the exceptions violate Goal 4 because they designate forest land for nonforest use without a proper exception."

More specifically 1000 Friends contend with respect to each of the contested areas as follows:

> "A. Area No. 1, Rosemont, is Not Exempt from Goal 3 and is not Shown to be Committed to Nonresource Use."
>
> "B. Area No. 3, Pete's Mountain, is Not Shown to be Committed to Nonforest use."
>
> "C. Area No. 4, South Stafford, is Not Committed to Nonresource use, Nor is Exempt from Goals 3 or 4."
>
> "D. Area No. 6, North of Dammasch, is Not Committed to Nonresource use, nor is Exempt from Goals 3 or 4."
>
> "E. Area No. 7, Southeast of Sherwood, is Not Committed to Nonresource Use, is Not Exempt from Goal 3 or 4."
>
> "F. Areas No. 8, 9, Pleasant Hill, Not Committed to Nonresource Use, Not Exempt from Goals 3 or 4."
>
> "G. Area 10, Bell Road, is Not Committed to Nonresource Use."
>
> "H. Area 11, Beckes Subdivision, is Not

Committed to Nonresource Use or Exempt from Goals 3, 4.

"J. Area 17, Viola, is Not Committed to Nonresource Use."

Petitioner Hood View Neighborhood Association alleges as follows as regards the areas known as Pleasant Hill and West Pleasant Hills:

"I. The Plan and Zone Changes Violate Goal 3."

"II. The Plan and Zone Changes Violate Goal 4."

"III. The Plan and Zone Changes Violate Goals 11 and 14."

SUMMARY OF FACTS

What follows in this section is a general overview. The facts relevant to each of the ten individual areas will be set forth in their respective sections.

On October 26, 1978 respondent enacted Court Order No. 78-1932, commonly referred to as Rural Plan Amendment I (RUPA I). The amendment designated approximately 37,880 acres for rural residential use. Rural lands are defined by Clackamas County in its comprehensive plan (unacknowledged) as:

> "* * * those which are outside the Urban Growth Boundaries and are suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services and which are not suitable, necessary or intended for urban, agriculture or forest use."

1000 Friends of Oregon filed an appeal with the Land Conservation and Development Commission (LCDC) under then ORS 197.300(1)(d) contesting the designation on about 3,730 acres of the total rural residential use allocation.

On August 9, 1979, LCDC adopted, with several changes, the recommendation of its hearings officer that the amendment failed to show it was impossible to manage the 3,730 acres for farm or forest use:

> "The Exceptions Statements covering the contested areas do not make a clear demonstration of commitment and, therefore, violate 2, 3 and 4 so that the Rural Plan Amendment is ineffective to change the designation of the contested areas to 'Rural.'" 1000 Friends vs. Clackamas County, LCDC 78-036.

Following LCDC's decision, Clackamas County held additional hearings to gather evidence on the nature of the "contested areas." On May 1, 1980, Clackamas County entered Order No. 80-828. Of the contested 3,730 acres which were the subject of 1000 Friends v Clackamas County (LCDC 78-036), Clackamas County determined that approximately 918 acres was resource land after all. Respondent Clackamas County concluded again, however, that the remaining 2,812 acres were committed to nonfarm and nonforest use. Therefore, Clackamas County again designated these areas "rural" in its plan. It is that determination which is the subject of this appeal.

Clackamas County's Order 80-828, as appealed herein, treats the 2,812 acres in 22 separate blocks of land ranging in size from 6.4 acres to 691 acres. Petitioner 1000 Friends contests 10 of the 22 areas which combined total approximately 2,250 acres.

Petitioner Hood View Neighborhood Association (Hood View) contests two of the blocks of land also being appealed by 1000

Friends. The noncontiguous two areas which are the subject of Hood View's appeal are identified as Pleasant Hill and West Pleasant Hills and given area numbers 8 and 9. Pleasant Hill and West Pleasant Hills combined total approximately 476 acres.

All contested areas are outside the Metropolitan Service District's urban growth boundary. The implementing zoning districts for the contested rural areas are Rural Residential Farm Forest, 5 acre minimum, and Farm Forest, 10 acre minimum.

DECISION

We begin this analysis from the basis that all parties to this appeal assumed it was necessary for Clackamas County to take an exception to the agricultural and forestry lands goals which applied to the contested blocks of land.[1] Clackamas County based its decision to designate the property as rural solely upon finding that the blocks were "irrevocably committed" to nonfarm/ nonforest use. Respondent County did not in its brief or at oral argument take the position that its decision to designate the property as "rural" was based on anything other than a conclusion of irrevocable commitment. The material contained in the findings portion of the record that does not specifically relate to the irrevocably committed test has been disregarded for the purpose of this opinion. (See discussion infra).

WHAT IS THE COMMITMENT TEST?

In the course of dealing with the exceptions process, LCDC has developed, both through quasi-judicial proceedings, and

policy pronouncements, a procedure for taking an exception which does not appear in Goal 2. This procedure has become known as the "irrevocably committed test."[2] The commitment test first appeared in the case of 1000 Friends of Oregon vs. Board of Commissioners of Marion County, LCDC No. 75-006 (1975), wherein it was stated:

> "The rule requiring an EFU zone need not be applied to two categories of lands: (1) lands which are already physically developed or built upon and no longer physically available for farm use; and (2) lands which are not built upon but which have otherwise been irrevocably committed to nonfarm uses. * * * The finding that the land has been physically developed or built upon, or that the land has been irrevocably committed to nonfarm uses are the only findings necessary to support a valid exception to the agricultural lands goal, assuming, of course, those findings comport with the facts." (Order, pp. 4-5, Emphasis added).

LCDC thus determined, in the above quoted case, that if it can be demonstrated resource land is irrevocably committed to uses not allowed by a particular goal, it is unnecessary to require full application of Goal 2's exception process.

A review of the case law does not clearly reveal what factors must be considered before a governing body can conclude certain lands are "irrevocably committed" to nonresource use. In light of the Court of Appeals' holding in Willamette University v. City of Eugene, 45 Or App 355, ___ P2d ___ (1980), we do know, however, that the definition or application of "irrevocable commitment" cannot in any way lessen the resource lands protections and standards set forth in statewide Goals 2, 3 or 4.

Due to Goal 3's reference to ORS 215, we begin there with this Board's review of what constitutes "irrevocable commitment." Specifically, we begin with ORS 215.243 which is entitled "Agricultural Land Use Policy." As is stated in ORS 215.243:

"* * * *

"(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and the nation.

"(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as a result of such expansion.

"(4) Exclusive farm use zoning as provided by law substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones." (Emphasis added).

Also, as is stated in ORS 215.263(3):

"If the governing body of a county initiates a review as provided in subsection (1) or (2) of this section, it shall not approve any proposed division of land unless it finds that the proposed division of land is in conformity with the legislative intent set forth in ORS 215.243."

ORS 215.203(2)(a) defines farm use as:

" . . . the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the

feeding, breeding, management and sale of, or the produce of, livstock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof." (Emphasis added).[3]

In light of the foregoing, it is evident there is a strong legislative intent that farmland be protected from the intrusion of development. Under this legislative scheme, the local governing body must shoulder the very heavy burden of considering all relevant factors before allowing farm property to be broken up into small parcels which might limit future alternatives to the use of that land. ORS 215.203(2)(a) indicates that before a conclusion farmland has become irrevocably committed to nonfarm use can be supported all reasonably possible[4] forms of "agricultural or horticultural use or animal husbandry or any combination thereof must be considered as being possible uses on the land." See also: Hillcrest Vineyard vs. Douglas County, 45 Or App 285 (1980).

In addition, we have learned through court action as well as LCDC decisions some of the matters that must be considered before deciding that agricultural land has been "irrevocably committed" to a nonfarm use. In Still v. Marion County, 42 Or App 115 (1979), the court held that a finding of commitment must relate to a specific showing of how activity on land surrounding the subject agriculture land prevents its continued use for farming purposes. As the court stated at 42 Or App 123:

/ /

"The evidence does not support the conclusion that the Drury property is committed to residential use, because nothing in the record establishes that the existence of nearby subdivisions would prevent use of the subject parcel for agricultural purposes." (Emphasis added).

Likewise in City of Sandy vs. Clackamas County, LCDC No. 79-029, the LCDC stated on page 15:

"A finding that land is committed to nonfarm uses merely because of adjacent development is inadequate in the absence of a finding supported by evidence that the adjacent development will preclude farming on the 'committed' parcel."

In its March 10, 1978 policy paper, as amended May 3, 1979, entitled "Common Questions Concerning the Exceptions Process" LCDC attempts to answer the question of what findings are necessary to satisfy the "committed" test. LCDC states:

"When determining that land is built upon or committed, the following land use characteristics must be considered:

"(a) adjacent uses;

"(b) public services (water and sewer lines, etc.);

"(c) parcel size and ownership patterns;

"(d) neighborhood and regional characteristics; and

"(e) natural boundaries.

"Consideration of parcel size and ownership patterns should include how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past partitioning or subdivision decisions made without findings against the goals when required, should not be used to justify new partitioning under the built and committed test.

"Existing parcel sizes and their ownership must be considered together in relation to the land's actual use. Rural lands in farm and forest use have been assembled and disassembled for years. Several undeveloped parcels under one ownership that are being farmed should be considered only as one farm. The mere fact that small parcels exist does not alone constitute a basis for commitment. The degree of commitment for small parcels in separate ownership will depend on whether the parcels are developed or not, stand alone or are clustered in a large group.

"More detailed findings and reasons are needed to support a conclusion that land is committed compared to the more obvious conclusion that the land is physically developed or built upon." (Emphasis added)

In its paper entitled "Common Questions About Goal No. 3 Agricultural Lands" August 5, 1977, LCDC, in pertinent part, states at Section 4(a):

"The Commission has not defined 'physically developed or irrevocably committed' prefering to leave that decision, on the nature and extent of these areas up to people more familiar with the particular situation. Whether or not land is in fact no longer available for farm use, will depend on the situation at the specific site and the factors dealing with areas adjacent to it. * * * *

"The following illustrations, from the Marion County Opinion and Order, are examples of some of the factors which need to be taken into account in determining whether or not land has been * * * 'committed.'"

* * * *

"(2) Lands Not Developed But Irrevocably Committed to Urban or Rural Uses.

"* * * *

"Whether the land is, in fact, 'committed' will depend on the specific factors on and adjacent to the ten acres. For instance, the land may be surrounded by intensive development which may make cultivation or grazing impracticable.

"On the other hand, the ten acres may only have a few acreage homesites nearby whose residents keep livestock and do small scale or intensive farming. In such a situation, the preservation of the ten acres in an exclusive farm use zone would be proper as would the inclusion of the acreage homesites in the EFU as a preexisting situation.

* * * *

"* * * [T]he mere existence of a subdivision plat or a water or sewer district with service available to an area or parcel of agricultural land does not alone constitute a basis for 'commitment.' There are many examples of subdivisions or service districts within which land is being farmed. Some of these subdivisions are the old 'fruit farms' type of five and ten-acre lot divisions which never go beyond the 'paper' stage. Others are more recent subdivisions which have not had any significant improvements. These agricultural lands obviously should be protected with an EFU zone."

LCDC shed still more light on this subject when it stated in its continuance order in the Yamhill County acknowledgment review:

"The exceptions statement and adopted supporting information do not provide compelling reasons and facts to demonstrate commitment to nonfarm or nonforest use. The findings presented rely primarily on parcel size. Information is needed on ownership, existing use on and adjacent to these areas, the location of farm/forest and nonfarm/forest residences and buildings, actual public services available and a precise statement on why these factors irrevocably commit a specific area to nonfarm or nonforest uses in order to understand Yamhill County's conclusion to take an exception to Goals 3 and 4." Order, November 8, 1979, page 13. (Emphasis added).

Finally, LCDC in its final acknowledgment order for Yamhill County stated that:

"* * * the determination that some resource lands are 'irrevocably committed' to nonresource uses and thus 'no longer available for farm use or forest uses' is

not a precise technical or legal equation. It is a judgment call based upon certain required facts." Order, June 12, 1980, page 5. (Emphasis added).

With the foregoing in mind we can begin to understand the required facts and level of detail which must be incorporated in respondent's consideration and subsequent findings before it can conclude the land under consideration is irrevocably committed to nonfarm use. This analysis holds true for forest land as well as farmland. See LCDC policy paper "Common Questions About the Exceptions Process Relating to the Preparation of Comprehensive Plans," supra, Section I(3)(2)(A), March 10, 1978. If the subject land is, by definition forest land, the same level of detail is required to show commitment that is required to show commitment of agricultural land. In addition, contrary to the position taken by some of the respondents herein, it does not necessarily hold true that neighboring uses which allegedly commit property to nonfarm uses will also commit that property to nonforest uses. Factors which restrict farming may not restrict forest activities. See LCDC policy paper: "Agricultural/Forestry Goal Interrelationship," 2/7/79.

Based on the preceding, we hold in sum that a conclusion of irrevocable commitment to nonresource (nonfarm or nonforest) use must at a minimum be based on detailed findings, supported by substantial evidence, showing that the subject land cannot now or in the forseeable future be used for any purpose contemplated in statewide goals 3 and/or 4 because of one or

more of the following:

a) adjacent uses;

b) parcel size and ownership patterns;[5]

c) public services;

d) neighborhood and regional characteristics;

e) natural boundaries;

f) other relevant factors.

DISCUSSION

The above list indicates the factors which a local government must consider in analyzing whether irrevocable commitment to non resource use exists. In certain situations the facts related to any one of the factors may by themselves justify a conclusion of irrevocable commitment. However, factors relating to the subject parcel itself cannot alone justify a conclusion of irrevocable commitment. Examples of factors which may by themselves justify such a conclusion are factors (a) (adjacent uses) and (b) (parcel size and ownership patterns).[6] The more common situation, however, will probably necessitate consideration of several, if not all, of the factors in combination. What follows is a brief discussion of the detail which must go into a local jurisdiction's consideration of each factor when it is relied upon to support a conclusion of irrevocable commitment. The findings made by the jurisdiction must reflect those detailed considerations.

Adjacent Uses

Findings regarding adjacent uses must contain a precise

statement on why after listing and considering the existing uses and location of residences and buildings on these areas, the property is irrevocably committed to nonfarm or nonforest use.

Parcel Size and Ownership Patterns

Findings regarding parcel size and ownership in and adjacent[7] to these areas must contain detailed information on how any existing subdivision or partitioning pattern came about and whether findings against the goals were made at the time of such partitioning or subdivision. Past partitioning or subdivision decisions made without findings against the goals when required, should not be used to justify new partitioning under the committed test. Existing parcel sizes and their ownership must be considered together in relation to the land's actual use. The mere fact that small parcels exist does not alone constitute a basis for commitment. The degree of commitment for small parcels in separate ownership will depend on whether the parcels are developed or not, stand alone or are clustered in a large group.

Public Services

Findings regarding public services must detail the level of actual public services impacting the land and a precise statement of why the existence of those services irrevocably commit the land to nonfarm or nonforest use.

Neighborhood and Regional Characteristics

Findings regarding neighborhood and regional

characteristics must be detailed and precisely state why those characteristics irrevocably commit the land to nonfarm or nonforest use.

Natural Boundaries

Findings regarding natural boundaries must detail what the boundaries are and state precisely why they irrevocably commit the land to nonfarm or nonforest use.

Other Relevant Factors

The general rule is that to be relevant, the factors considered must relate to activities on or characteristics of the subject and the surrounding property which prevent the use of the subject site as goal 3 or 4 land. The exception to the general rule is found in circumstances where actual development has taken place on the subject property and, therefore, satisfies a conclusion that the land is built upon (see discussion infra).[8]

Analysis of Clackamas County's Consideration

According to record Exhibit D entitled "Findings in Support of Conclusion that Areas Designated Rural are Committed to Nonfarm/Nonforest Uses," Respondent Clackamas County's determination of commitment was based on ten "factors of consideration:"

(1) Size of the ownerships;

(2) Development on the contested property;

(3) Soil quality of the property;

(4) Recent farming history of the property;

(5) Topography which may preclude agricultural or forest use;

(6) Roads through or bordering contested areas;

(7) Development of surrounding area;

(8) Ownership size of neighboring areas;

(9) Plan designation and zoning of adjacent properties; and

(10) Natural boundaries."

We find that item (3) is not relevant to an application of the irrevocable commitment test. The Commission interprets item 3 as referring to soil capability classification as set forth in Goal 3, and, therefore, not relevant to the application of the irrevocable commitment test.[9]

As regards Item no. 9, plan and zone designations on adjacent properties which have not developed into actual use while relevant are not material factors supporting a conclusion of present irrevocable commitment. Respondent County, throughout its findings points to various subject areas being "surrounded by land designated rural." Basing a conclusion of commitment on such a designation is erroneous when one corsiders the purpose to be achieved by the zone governing most of those surrounding lands. Section 33 of Clackamas County's zoning ordinance states the purpose of the Rural Residential Farm Forest (RRFF-5) Zone is:

"A.... To provide areas for rural living where this type of development is compatible with the continuation of farm and forest uses.

"B.... To conserve the natural scenic beauty of the County.

"C.... To protect the watersheds of existing or potential major sources of municipal or domestic water supply from encroachment by uses that would affect the quantity or quality of water produced, protect wildlife habitats, and other such uses associated with the forest.

"D.... To avoid the potential hazards of damage from fire, pollution, and conflict caused by urbanization." (Emphasis added).

Land uses which by definition are to be compatible with agriculture and forest uses logically cannot be used to justify a conclusion that because of their existence the property they border (subject parcels) is committed to nonresource use.

The remaining factors considered by the county fit within one of the categories determined by LCDC to be necessary characteristics for consideration in applying the committed test.[10] Common Questions Concerning the Exceptions Process, supra.

Item No. 2 relates to activity taking place on the subject property.[11] It is the "built upon" half of the "built upon or committed test" identified in LCDC's "Common Questions Concerning the Exceptions Process," paper supra and LCDC's Common Questions about Goal 3 - Agriculture Lands" paper, supra. The fact that development has occurred on the subject property can be used to indicate that past activities of man have rendered the land upon which the development sits unusable for the agriculture or forest purposes contemplated in the statewide goals.

Item no. 4 (farming history) may be relevant if it clearly supports the conclusion of irrevocable commitment. Therefore, of the 10 "factors of consideration" used by Clackamas County, items 2, 4 and 5 fit into the "other relevant factors" category.[12]

In sum, we hold that a conclusion of irrevocable commitment must be supported by findings which indicate that because of adjacent uses, parcel size and ownership, public services, neighborhood and regional charateristics, natural boundaries, or other relevant factors, the land cannot be used to achieve any agriculture or forest purposes contemplated by statewide goals 3 or 4.[13]

SCOPE OF REVIEW: COMPELLING REASONS

In the prior section of this opinion we outlined what findings are necessary in attempting to reach a conclusion of irrevocable commitment. In this section we discuss the standard to be used in reviewing the conclusions reached from those findings. Petitioners acknowledge that this Board is bound by any Clackamas County finding of fact if the finding is based upon substantial evidence in the record. Petitioners go one step further, however, and argue, based on Goal 2's requirement, that "compelling reasons" must be shown why it is not possible to put the land to a resource use. They argue the facts found by the local government must "compel" the conclusion that the land is irrevocably commited to nonfarm or nonforest use. As such they seem to be arguing that if this

Board disagrees with respondent's conclusion of commitment, we can reverse because we are not compelled. As an example petitioner 1000 Friends postulates that if there exists substantial evidence to support a finding the property is either resource or nonresource land, then a conclusion of irrevocable commitment is not compelled even though under the holding in such cases as Christian Retreat Center v. Comm. for Washington Co., 28 Or App 673, 560 P2d 1100, rev den (1977), this Board would be controlled by such a finding. Petitioners argue that if an area could be designated either resource or nonresource, then it must be designated resource under the dictates of the Statewide goals and Oregon Revised Statutes.

The distinction drawn by Petitioner 1000 Friends is not necessary if the local governing body failed to sufficiently consider all relevant activities taking place on and characteristics of lands in order to arrive at a conclusion of irrevocable commitment.[14] The findings used to support such a conclusion must be such as to exhaust all reasonably possible agricultural or forest uses of the subject property as was discussed supra.[15] If there are insufficient findings, then there is not a sufficient basis from which a conclusion of irrevocable commitment could be drawn. In such a situation the matter would need to be remanded to the local jurisdiction to make additional findings which could support such a conclusion.

If, however, all necessary factors have been considered and

appropriate findings made, then the question of whether our scope of review is limited to merely deciding if there exists substantial evidence to support the findings or whether this Board can review the decision to determine if the findings compel the conclusion of commitment takes us into another sphere. As used in conjunction with the irrevocably committed test, the compelling reasons terminology takes on the aspects of a reasonable person scope of review. In other words, would a reasonable person faced with the same findings be compelled (obliged or forced) to conclude as the local government did. In applying this reasonable person scope of review to Petitioner 1000 Friends' question of what happens to an area which could be considered either resource or nonresource, we can see that a reasonable person would not be compelled to conclude that irrevocable commitment to nonresource use exists since a potential resource use is available.

Therefore, it is the determination of this Board that the role of LUBA is to first determine whether the findings address all relevant criteria and are supported by substantial evidence. If there are insufficient findings, then the conclusion is not supported. Only if we decide sufficient findings exist (i.e. findings which address all relevant criteria and are supported by substantial evidence) will we apply the test of whether a reasonable person would be compelled to conclude irrevocable commitment to nonresource use exists.

FINDINGS RELATING TO SPECIFIC AREAS OF LAND

Respondents argue that in reviewing the findings relating specifically to each area or block of property, we must also consider Exhibit D's section which sets forth a number of factors used by Clackamas County in determining which properties were committed to nonfarm/nonforest use. Exhibit D lists ten factors (see page 17, supra where the ten factors are summarized). As a sample of the terminology used in Exhibit D's ten factors, we look at two factors cited by respondents:

> "Size of the ownerships of the contested property: The smaller the ownership, the less likely it is to have utility for agricultural or forest purposes.
>
> "* * *
>
> "Development of surrounding area: Cultivation and grazing are often impractical or impossible on land surrounded by residential development, for reasons such as destruction or theft of crops, harassment of stock by domestic animals, the spread of tansy and othr (sic) noxious weeds from neighboring properties where there is no control because there is no agricultural activity, and complaints from neighbors bothered by farming operations; the more intense the development and the closer it is to the contested area, the greater the difficulties created."

These are valid considerations and help explain the county's thought processes but they are not findings. They are not specifically applied to each individual area nor do they recite facts unique to each area. Without a specific recitation of facts relative to each individual block, these considerations are not findings and are not sufficient to explain why a conclusion of commitment was arrived at in a

specific factual situation. See Sunnyside Neighborhood League v. Bd. of Commissioners of Clackamas County, 280 Or 1, 21, 569 P2d 1063 (1977); City of Lake Oswego v. Clackamas County, LCDC 78-031 (1979), p 14.

With the foregoing standards as to sufficiency of findings and scope of review in mind, we now will apply them to each of the ten contested areas individually.

AREA NO. 1, ROSEMONT

The Rosemont area contains 80.61 acres and is located one mile west of West Linn. The land contains agricultural and forest class soils. The 80.61 acres consists of three ownerships of 52.98, 13.76, and 13.87 acres. The county's findings which at least in part relate to a conclusion of commitment are as follows:

> "The area directly east of this property is intensively developed; there are 25 ownerships, average size 3.4 acres, 23 of which are developed; all but one of the 25 ownerships are 6 acres or less (Exhibit D1-R-2A).
>
> "The area farther east also is developed (Exhibit D1-R-2A).
>
> "Directly to the south is the 33-lot Ashdown Wood Subdivision (Exhibit D1-R-2A).
>
> "Most of this area, particularly TL 400, is steeply sloped (Exhibit T/W-8).
>
> "This property is bounded on the east and south by areas designated rural; the property is isolated from the agricultural lands to the west by a steep slope and Wilson Creek (Exhibit T/W-8).
>
> "Access to the property is through the developed area to the east (Exhibit D1-R-1; Exhibit D1-R-2A).
>
> ". . . .

"This property is not practical for forestry because of the nature and location of the area, in particular the surrounding residential development."

Petitioner 1000 Friends argues that the Rosemont area is not exempt from Goal 3 and is not shown to be committed to non-resource use. A review of the record indicates the land is bordered on the north and on the west by land designated "agricultural" on the plan map and zoned EFU 20. The petitioner argues that evidence in the record not cited by the county indicates that the land is excellent forest land. Assessors' maps show that although there are many small ownerships with residences to the east and south of the subject land, it is bordered on the east by a 22.66 acre ownership and on the north and west by land zoned EFU. An aerial map of the area shows a significant forested area to the south separating the subject property from the Ashdown Subdivision.

When the county finds that small ownerships nearby "commit" land to non-resource use it must explain why. Still v. Marion County, supra. The existence of homesites nearby does not necessarily indicate that the subject property is lost to resource management. 1000 Friends v. Marion County, supra. It may be that residents on the small acreages keep livestock or do intensive, small scale farming and would not interfere with farm or forest management on this 80.61 acre block.

The reference by the county to the fact rural residential zoning adjoins the lands is not evidence of commitment. As we discussed supra, the reliance by the county on a finding that

neighboring property is zoned rural residential and thereby commits the property in question to rural residential is logically inconsistent.

Respondents cite us to the findings and argue the county determined that the cumulative effect of the factors cited in those findings indicates this property is no longer viable for agricultural and forest uses and that, therefore, the land is committed and should be designated rural. Respondents claim that the county determined that the boundary line should be drawn where it is, based on the nature of the contested property and the fact that there is a natural topographic break between it and the agricultural area.

Based on the discussions aforementioned, it is this Board's decision that the county has failed to make sufficient findings upon which it can base a conclusion of commitment. Nowhere has the county addressed how the small parcel ownerships will affect this particular area. No inventory of activities or related findings taking place on the neighboring property exists in the record. The conclusion that because properties are held in small ownership the use of the subject property as either agricultural or forest land is somehow prevented is unsupported.

In addition, the entire thrust of the county's finding in this matter seems to be directed at agricultural lands and the decision to draw the borderline where it was is directed at its relation to other agricultural land. There are no specific findings to support the conclusion that it is inappropriate to

use the property as forest land. Based on the foregoing, the county's decision regarding Area No. 1, Rosemont, consisting of 80.61 acres is remanded for further proceedings consistent with this opinion.

AREA NO. 3, PETE'S MOUNTAIN

The Pete's Mountain block consists of 454.09 acres and is located 1 mile west of West Linn. The record indicates that the property is made up of three ownerships consisting of 412.68, 13.41 and 28.00 acres.

The findings which at least in part relate to a decision of commitment are as follows:

> "Directly to the southwest of this property are 8 ownerships, ranging from .51 to 7.29 acres, average size 4.3 acres; 7 of the 8 are developed (Exhibit D3-PM-2A; D3-PM-2B).
>
> "Also to the southwest is the 18 lot Brentwood Heights Subdivison (sic), mostly developed (Exhibit D3-PM-2D).
>
> "Directly to the southeast is an area of small lot development (Exhibit D3-PM-2B).
>
> "The property is bordered on the northeast by the developed Bosky Dell Subdivision (Exhibit D3-PM-2C; D3-PM-1).
>
> "The property is bordered on its southwest by Schaeffer Road, and on the northeast side by State Highway 212 and S.W. Turner Road.
>
> "A large portion of this area slopes steeply towards the north and east (Exhibit T/W-8).
>
> "This is surrounded by land designated Rural except for one small portion of the southwest edge which meets land designated Forest across Schaeffer Road.

> "This area is inappropriate for timber use because of proximity to the urban area, surrounding development, and topography, particularly the steep slopes in the north and east portions."

Petitioner 1000 Friends argues that Pete's Mountain is not shown to be committed to nonforest use. It argues that the block joins an area designated "forest" on the Clackamas County Comprehensive Plan and zoned Transitional Timber-20 on the southwest. Evidence in the record indicates the block is, because of soil type, potentially capable of supporting a forest designation. The maps in the record indicate the presence of large ownerships (45, 38, 20, 26 acres) bordering or only an ownership removed from the subject block on the south and west sides. One parcel in the block joins another outside the exception area (across Schaeffer Road), designated "forest" (35 acres total).

Once again existence of the small ownerships, many with dwelling units, occurring at the edges of a 454 acre block of forest land does not necessarily commit the block to nonforest use. A definitive explanation as to why these factors commit the property to nonforest use is in order.

Petitioner argues that since this is a 454 acre block, it is by its very nature too large to be committed by nearby rural residences. It argues that the block contains enough land for 22 20-acre parcels which are within the Clackamas County's "forest" policies plan. (Clackamas County Comprehensive, p. 94-95).

Respondents argue "the fact is that if the county is forced to designate this property forest, the results will be an irregularly shaped forest designation almost completely surrounded by developed rural areas." We find respondent's argument unconvincing. Irregular shape of a block containing 454 acres does not support a conclusion of commitment.

For the reasons stated in the body of this decision and in the Rosemont section as well as the size of the parcel as argued by petitioner, this Board finds the county has failed to make sufficient findings to support a conclusion of commitment on the Pete's Mountain area. Therefore Area No. 3, Pete's Mountain (454.09 acres) is remanded for further proceedings consistent with this opinion.

AREA NO. 4, SOUTH STAFFORD

As originally appealed, petitioner contested the 691.92 acres contained in the South Stafford block. Subsequent to its filing of the initial petition, the Trail Road Ranch subdivision consisting of 119.66 acres (Tax Lots 100 through 2500 in Section 29C, Township 2 South, Range 1 East (T2S, R1E) was platted and is now under development. The petitioner does not now include that property in this petition nor does it include 35.59 acres identified as T2S, R1E, 29B, TL 900. Therefore, the petitioners are now contesting a block of property totalling 536.33 acres. The findings by Clackamas County which at least in part relate to commitment of the

property contained in the South Stafford area are as follows (Including those relating to the property no longer being contested by petitioners):

> "One of these ownerships, T2S, R1E, 29C, TL 100-2500, is clearly committed in view of the fact that it constitutes the Trail Road Ranch subdivision, previously approved by this board and currently being developed. (Property not being contested).
>
> "Another ownership, T2S, R1E, 29B, TL 900, is clearly committed in that it is bounded on the south by the Trail Road Ranch subdivision, on the west by the Prosperity Park subdivision, and on the north by the I-205 freeway; the only access to this property is through the Trail Road Ranch subdivision (Exhibit D4-SS-2D). (Property not being contested.)
>
> "North and northwest of the property are the Prosperity Park and Meridian Tracts subdivisions, totalling approximately 60 lots, most developed, and numerous other small ownerships (Exhibit D4-SS-2D).
>
> "The Meridian Tracts and Prosperity Park subdivisions, along with the Trail Road Ranch subdivision, form a solid block along the northern boundary of the contested area.
>
> "To the southwest of the contested area lie 16 ownerships, 13 of which are less than five acres and the largest of which is 16 acres, averaging 4.78 acres; 13 of these parcels are developed (Exhibit D4-SS-2B).
>
> "On land designated Rural in the midst of the contested area are 14 ownerships, 10 of which are 5 acres or less, with the largest 15 acres, averaging 5.2 acres; 10 of these ownerships are developed (Exhibit D4-SS-2A, D4-SS-2B).
>
> "To the south of the contested area are 19 ownerships, 12 of which are 5 acres or less, the largest of which is 15 acres, averaging 5.1 acres; 15 of these ownerships are developd (Exhibit D4-SS-2B).
>
> "To the southeast of the contested area are 20 ownerships, 14 of which are 5 acres or less, the largest of which is 15 acres, averaging 4.7 acres; 16

of these ownerships are developed (Exhibit D4-SS-2A, D4-SS-2B).

"The contested area is bordered and crossed by a number of roads, including Stafford Road, Trail Road, Schatz Road, S.W. 65th Avenue (Meridian Road), S.W. 55th Avenue, Delker Road, Meridian Way, Gage Road, and Newland Road; many of these roads are heavily traveled, particularly Stafford Road and S.W. 65th Avenue.

"The contested area is bordered on all sides by areas designated Rural except at two small points in the southeast corner; the western boundary of the area is the Washington County line, which the adjacent area in Washington County designated Rural (Exhibit T/W-12).

"Much testimony and other evidence was submitted indicating that it is no longer economically feasible to farm in this area, even on the two largest undeveloped ownerships (see September 10, 1979 testimony of Jacquelyn Wilhelm, Don O'Conner, Mrs. Frances Davis, Don Oldenstat; September 26, 1979 testimony of James Praggastis, Don O'Connor, Jacquelyn Wilhelm; exhibits #11, #100, #101, #103, #106, and #107)."

Petitioners allege that the South Stafford block is not committed to non-resource use. They also indicate that the property can support a "forest" designation. The record indicates the block contains predominantly Douglas Fir Site Class I and II soils. The block joins an area designated "agriculture" on the Clackamas County Plan and zoned EFU-20 to the southeast. Assessor's maps in the record disclose ownerhips to the east and northeast of 46.75, 64, 41.23 acres. Again petitioners allege that the commissioners failed to explain why nearby small acreage parcels, some with dwelling units, make it impossible to retain this large, 536 acre block of farm and forest land for resource use. Petitioners allege

the evidence in the record indicates that many of the nearby smaller ownerships are in farm or forest management. They also point out the record indicates that not all ownerships bordering the block are small.

The county' reliance on the traffic on area roads is not in and of itself sufficient to conclude commitment exists. There is no showing that traffic on a roadway invaribly will turn otherwise farm or forest property into non-resource land.

We hold that the county has failed to make sufficient findings to support a conclusion the property is committed. The county's decision regarding Area No. 4, South Stafford, (586.44 acres) is, therefore, remanded for further proceedings consistent with this opinion.

AREA NO. 6, NORTH OF DAMMASCH

Clackamas County found that this block contains 107 acres made up of four ownerships of 78, 19, 5 and 5 acres. The land contains agriculture and forest class soils. The county's findings which at least in part relate to a conclusion of commitment are as follows:

> "To the south of this property is intensive development, with 21 ownerships, 18 of which are 5 acres or less, averaging 4.5 acres; 20 of these ownerships are developed (Exhibit D6-ND-2B).
>
> "On the west side of this property in the area designated Rural are 11 ownerships, 10 of which are 5 acres or less, averaging 3.1 acres; all of these ownerships are developed (Exhibit D6-ND-2A, D6-ND-2B).

"The property is bordered on the south by S.W. Malloy Way and on the southeast by S.W. Grahams Ferry Road (Exhibit D6-ND-2A).

"The southern portion of this area, which includes the better soils, contains the smaller ownerships; the larger ownership to the north contains predominantly Class VI or worse soil, largely rocky and swampy, with steep slopes, all of which preclude farm use (Exhibits #7, #30)."

Once again Petitioner 1000 Friends argue that there is no showing by the county why the surrounding low density development commits the 107 acre block to nonresource use. The aerial photographs and the parcel ownership maps in the record indicate that to the north, east, and southeast is property held in large blocks and zoned EFU-20. No findings regarding why, in the face of this evidence, the county concluded commitment exists. We find that the county's conclusion of commitment is not supported by the findings set forth in its decision. We direct the county's attention to the body of this decision wherein the extent of findings relative to adjacent development is discussed. Therefore, respondent's decision regarding Area No. 6, North of Dammasch (107 acres) is remanded for further proceedings consistent with this opinion.

AREA NO. 7, SOUTHEAST OF SHERWOOD

Petitioner 1000 Friends allege that the Southeast of Sherwood block is not committed to non-resource use and, therefore, is not exempt from Goals 3 or 4 based on the relevant findings of the Respondent Clackamas County.

Clackamas County found that the property designated as Area 7, Southeast of Sherwood contains 187.76 acres made up of four ownerships of 102.74 acres, 77.54 acres, 4.98 acres and 2.50 acres. The land contains agriculture and forest class soils. The county's findings which at least in part relate to a conclusion of commitment are as follows:

> "In the rural area adjoining this property to the northwest are 11 ownerships, the largest of which is 12.2 acres, with an average ownership size of 6.6 acres; 10 of the 11 ownerships are developed (Exhibit D7-SES-2A).
>
> "To the east are 9 ownerships, 6 of 5 acres or less, averaging 7.3 acres; all are developed (Exhibit D7-SES-2B).
>
> "To the southeast of the property is the developed Meadowbrook Estates subdivision (Exhibit D7-SES-2A).
>
> "This property is bordered on the east and west by land designated Rural; the property is bounded on the north by areas in Washington County designated Rural and the Sherwood urban growth boundary (Exhibt #14, T/W-12).
>
> "The property is bordered on the west and southwest by S.W. Baker Road; S.W. Morgan Road runs through the property."

A review of the record indicates that the assessor's maps show large ownerships as well as small ownerships on the borders of this land. The land bordering to the south and southwest is presently zoned EFU 20. Once again, Clackamas County cites small developed ownerships to the northwest, east and southeast as the basis for its finding of commitment to non-resource use. The county does not in its findings explain why this property is committed in light of the existence of the

surrounding zones and size of the parcels.

Based on the lack of sufficient findings and for the reasons set forth in the body of this opinion, the county's determination regarding the commitment of Area No. 7, Southeast of Sherwood (187.76 acres) is remanded for further proceedings consistent with this opinion.

AREA 8: PLEASANT HILL and AREA 9, WEST PLEASANT HILLS

Petitioner 1000 Friends alleges that Areas 8 and 9 are not committed to nonresource uses. Petitioner Hood View in essence alleges the same errors. Petitioner Hood View also alleges that the action by the county violates Goals 11 and 14.

The findings made by respondent contain a narrative of the growth pattern of the area as well as discussion of soil productivity. The land contains agriculture and forest class soils. More specifically, the county found the following which at least in part relate to commitment:

PLEASANT HILL

The Pleasant Hill block contains 253.14 acres located approximately one mile south of Sherwood held in single ownership, not contiguous to West Pleasant Hills.

> "To the west and southwest of this property are 13 ownerships, averaging six acres, ten of which are developed (Exhibit D8-PH-2A, D8-PH-2B).
>
> "Just to the southwest is the Pleasant Hills Estates subdivision, with 25 lots in 19 ownerships, 16 of which are developed. (Exhibit D9-PH-2C)

"To the east, south, and southeast are a number of additional small developed ownerships (Exhibit D8-PH-2A). The east and northeast border of this property is S.W. Baker Road; part of the southern boundary of the property is S.W. Tooze Road; the northwest border of he property is S.W. McConnell Road.

"Rock Creek crosses the property (Exhibit D8-PH-2A). Much of the property is steeply sloped and broken up by gullies. (Exhibit No. 5, No. 27, and No. 28)."

WEST PLEASANT HILL

The West Pleasant Hill block contains 222.52 acres located approximately one mile south of Sherwood.

Directly east of this property is the Pleasant Hill Estates subdivision, consisting of 25 lots in 19 ownerships, 16 of which are developed (Exhibit D9-WPH-2C).

"Directly southwest of this property is the Corral Creek Ranch subdivision, with 11 ownerships, 13 of which are developed, all ranging between one and five acres (Exhibit D9-WPH-2B).

"South along Bell Road are a number of developed lots of five acres or less (Exhibit D9-WPH-2A).

"To the north and northwest are a number of developed lots of five acres or less (Exhibit D9-WPH-2A D9-WPH-2D).

"The south boundary of the property is Bell Road; the western boundary of the proprty is Ladd Hill Road; the property is partially bounded on the north by Tooze Road (Exhibit D9-WPH-2A).

"The land to the south of the property is designated rural, land to the east is designated rural, and to the west is an area of Washington County also designated rural (Exhibit T/W-12).

"The property is bisected by Mill Creek and its tributaries; much of the property is steeply sloped, and, therefore, unsuitable for agriculture (Exhibit T/W-8; No. 6; No. 25)."

Both parcels or blocks are considered together for the purpose of this decision. Petitioner 1000 Friends makes many of the same arguments it has made regarding the other blocks of property already discussed. In this case, however, they point to numerous factual situations in the record where the property surrounding the Pleasant Hills block which allegedly committed the subject property to nonresource use was originally allowed to be subdivided on the belief that parcels would allow for continued farming operations. For an example, petitioner points to the case of Charles T. Smith wherein his partition was granted (the property remained zoned EFU), because the partition would (1) not interfere with nearby farming operations and (2) the parcel would continue to support an existing commercial filbert orchard.

In addition, petitioner cites a second partition which was approved by Clackamas County in Order 78-1836 wherein the County Commission found that agricultural operations on two new five acre parcels would continue and that residences on the new parcels would not interfere with area farms.

Petitioners allege that respondent has failed to show how the surrounding property restricts resource activities on the subject property. Petitioner Hood View goes one step further and points to evidence in the record which indicates that some of the surrounding small parcels which the county points to as committing the subject property to nonresource use were subdivided illegally or done prior to the adoption of the

statewide goals. This evidence, of course, relates to the parcel size and ownership development portion of the commitment test as set forth supra. The county failed to make any findings regarding this evidence.

We find that the County has failed to make sufficient findings by which a conclusion of commitment can be supported. Therefore, Respondent Clackamas County's actions regarding Area 8, Pleasant Hill (253.14 acres) and Area 9, Pleasant Hills West (222.52 acres) is remanded for further proceedings consistent with this opinion.

AREA 10: BELL ROAD

The county found that this 103.34 acre block located two miles west of Wilsonville contained five ownerships. The land contains agriculture and forest class soils. Their findings relevant to the question of commitment are as follows:

> "To the west and south of this property are the Corral Creek Ranch subdivision and a number of other small ownerships ranging from 4 to 10 acres, the majority of which are developed, and an archery range (Exhibit D10-BR-2).
>
> "There are a number of other small developed parcels in the immediate vicinity (Exhibit D10-BR-2).
>
> "Bell Road borders and runs through this property (Exhibit D10-BR-2).
>
> "The property is bordered on the north, west and south by areas designated Rural."
>
> "Corral Creek runs through this property and much of the property is steeply sloped (Exhibit T/W-8)."

Once again Petitioner 1000 Friends argues that no findings were made concerning why the parcels nearby make it impossible to manage this land for farm or forest use. In addition, the petitioners point to the fallacy of findings that property designated rural bordering the subject property somehow commits the subject property to nonresource use. We agree with the petitioners for the reasons set forth supra. We find that the county's determination regarding Bell Road, Area No. 10, (103.34 acres) is not supported by sufficient findings. Therefore, we remand it to the county for further proceedings consistent with this opinion.

AREA 11: BECKES SUBDIVISION

Clackamas County found that this 44.62 acre block located 1/4 mile east of Wilsonville is made up of two ownerships. The land contains agriculture and forest class soils. Their findings regarding the property relevant to the question of commitment are as follows:

> "Directly to the east of the subject property is the Beck's Addition subdivision and other small parcels, a total of 24 ownerships, 21 of which are 5 acres o less with an average ownerhip (sic) size of 4.1 acres; 19 of these ownerships are developed (Exhibit D11-BS-2A).
>
> "Just to the west of the property is the Charbonneau subdivision complex; to the north is the Prairie View Estates subdivision.
>
> "The western boundary of the subject property is Jacob Milay Road; the southern boundary is Browndale Farms Road; Becke Road ends in a cul-de-sac in the property (Exhibit D11-BS-2A).

"The southern end of the property is covered with old growth timber; this resource can best be preserved for wildlife habitat and scenic beauty by low density rural development. Because of the small size of this forested area and its isolation from other timber lands, forestry activities are not feasible.

"Evidence and testimony was submitted that it is not economically feasible to farm this property (Exhibits #19, #21; testimony of Mark O'Donnell, September 10, 1979).

"These properties are not now and have never been in farm deferral."

The property as noted above is in two ownerships. Both owners appeared as respondents Heininge and Becke through respective counsel. In addition, Clackamas County responded regarding this block of property. According to Respondent County, it concluded that because of the intensive developments at the east, the effect of the Charbonneau subdivision just to the west and the Prairie View Estate subdivision just to the north, evidence that farming of the property is not feasible and the fact that the properties were too small to support forestry, the property is committed to nonfarm and nonforest use.

Petitioners contend in their brief that the property is surrounded on the north, west and south by larger acreage tracts zoned EFU 20. They cite us to items in the record, specifically map 2A as support for their designation of this property EFU 20. A review of that map does not indicate that EFU property surrounds the subject block. Rural zoning map file number ZC-2-79 dated June 18, 1979 marks off the subject

area in yellow. According to that map the designation for the surrounding property is General Agricultural. Once again, however, the county's findings do not sufficiently address the specific issues set forth supra. i.e. adjacent uses, parcel size and ownership patterns, etc. Therefore, we find that the county's findings are insufficient and the decision regarding Area No. 11, Beckes Subdivision (44.62 acres) is remanded to the county for further proceedings consistent with this opinion.

AREA NO. 17: VIOLA

The county found that this area contains 121.33 acres located one mile east of Viola and contains four ownerships. The land contains agriculture and forest class soils. Those findings relevant to the issue of commitment are as follows:

> "TL 4500 is bordered by 17 ownerships, 16 of which are 6 acres or less; 10 of the 17 ownerships are developed (Exhibit D17-V-2).
>
> "Directly to the northwest of TL 4500 are 22 parcels, ranging from .3 to 5.5 acres, in 21 ownerships; 16 of the ownerships are developed (Exhibit D17-V-2).
>
> "Directly to the northeast of TL 4500 are 34 parcels in 28 ownerships, ranging from 2 to 12 acres, the majority from 3 to 5 acres; 11 of these ownerships are developed (Exhibit D17-V-2).
>
> "Directly east of TL 2400 are 22 parcels, ranging from .3 to 5.5 acres, in 21 ownerships, 16 of which are developed (Exhibit D17-V-2).
>
> "Directly to the northwest of TL 2400 are 3 ownerships, ranging from 5 to 10 acres, 1 of which is developed (Exhibit D17-V-2).
>
> ". . . .
>
> "The majority of TL 2400 is a canyon (Exhibit R/V-7; D17-V-1).

"Jubb Road runs through TL 2400 and borders TL 4500 on the northwest; TL 4500, 4502 and 4503 front on Springwater Road (Exhibit D17-V-2).

"This property is cut off from the agricultural land to the west and south by topography; it falls naturally within the Rural developed area to the north and east.

"Evidence was submitted that this property is unproductive for farming and not practical for timber management (testimony of Kenneth Jubb, Carolyn Crader, and Lowell Njust, Sept. 10, 1979)."

Petitioner 1000 Friends contests this block on the same grounds as those previously set forth. Specifically, it argues that the alleged nearby small ownership commitment of this block to a nonresource use has not been sufficiently explained. Once again its argument is that there is no discussion of the current use of the small ownerships or explanations why they make it impossible to manage these acreages for farm or forest use. Still v. Marion County, supra.

Evidence in the record, i.e. plan and zoning maps, indicate the property is surrounded by general agricultural and EFU 20 zones on two sides. On the remaining sides of this oddly shaped block is moderately dense development, ranging in parcel size from .3 to 12 acres each. We agree with petitioner that without a finding as to what activity is taking place on the subject and neighboring properties and an explanation of why that activity commits the subject property to non-resource use, the basis for a conclusion of commitment has not been set forth. This matter is remanded to the county for further proceedings consistent with this opinion.

CONCLUSION

Our holding in each of the contested areas is based on respondent's failure to make sufficient or proper findings. As such, we find it unnecessary to apply the "reasonable person" test set forth supra. In addition, in light of this opinion and consistent with our holding in Kerns v. Pendleton, 1 Or LUBA 1 (1980) (LUBA No. 79-001), it is not necessary to address petitioner Hood View's third allegation of error.

FOOTNOTES

[1] Statewide Goal No. 2, Part II, entitled Exceptions states in pertinent part:

> "Exceptions: When, during the application of the statewide goals to plans, it appears that it is not possible to apply the appropriate goal to specific properties or situations, then each proposed exception to a goal shall be set forth during the plan preparation phases and also specifically noted in the notices of public hearing. The notices of hearing shall summarize the issues in an understandable and meaningful manner.
>
> "If the exception to the goal is adopted, then the compelling reasons and facts for that conclusion shall be completely set forth in the plan and shall include:
>
> "(a) Why these other uses should be provided for:
>
> "(b) What alternative locations within the area could be used for the proposed uses;
>
> "(c) What are the long term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;
>
> "(d) A finding that the proposed uses will be compatible with other adjacent uses." (Emphasis added)

[2] Since none of the parties raised as an issue the validity of the committed test as a substitute for a traditional goal 2 exception in light of the Court of Appeals' holding in Willamette University v. City of Eugene, 45 Or App 355, ___ P2d ___ (1980), we do not express an opinion as to the validity of the test.

[3] In Thede v. Polk County, ___ Or LUBA ___ (1980) (LUBA No. 80-067) we adopted the definition of "profit" set forth in 1000 Friends v. Benton County, 32 Or App 413, 575 P2d 651 (1978) which states:

"The legislative history of ORS 215.203 indicates that the use of the term 'profit' in that statute does not mean profit in the ordinary sense, but rather refers to gross income inasmuch as this was the test under the former $500 standard and is the present statutory standard for unzoned farmland. Since the legislature did not specify a gross dollar amount required for lands to qualify for exclusive farm use zones under ORS 215.213, it intended that this be a matter of discretion for the counties. LCDC may as part of its goal impose limits on that discretion.***"

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[4] Part III, Section 1 of the Land Conservation and Development Commission's Determination of May 7, 1981 mandated the following change:

"III. The language concerning consideration of agricultural and forest uses for the subject property be amended as follows:

"1. Page 9, line 13, add the words 'reasonably possible' after the word 'all'."

The original sentence in LUBA's Revised Proposed Opinion read as follows:

"ORS 215.203(2)(a) indicates that before a conclusion farmland has become irrevocably committed to nonfarm use can be supported all forms of "agricultural or horticultural use or animal husbandry or any combination thereof must be considered as being possible uses on the land."

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[5] LCDC Determination of 5/7/81, Part II, Section 1 read as follows:

"II. The language discussing the factor concerning parcel size be amended as follows:

"1. Page 14, line 2, delete "on neighboring property"

Previous to this change, section b) read as follows:

"b) parcel size and ownership patterns on neighboring property."

[6] A portion of Part I of the Determination of the Land Conservation and Development Commission dated May 7, 1981 stated as follows:

> "I. In regard to 'other relevant uses,' the opinion and order should include discussion of the subject parcel itself as a relevant factor in determining 'irrevocable commitment' to justify a Goal 2 exception, and should be modified as follows:
>
> "1. Page 14, line 13, add at the end of the sentence "however, factors relating to the subject parcel itself cannot alone justify a conclusion of irrevocable commitment."
>
> "2. Page 14, line 13-16 - amend to read "Example of factors which may be themselves justify such a conclusion are factors (a) (adjacent uses) and (b) (parcel size and ownership patterns).

Part II, Section 2 of LCDC's Determination also requested the following change:

> "2. Page 14, line 15-16, delete "neighboring property".

Previous to this determination, the relevant portion of the Revised Proposed Opinion of 3/12/81 read as follows:

> "* * * In certain situations the facts related to any one of the factors may by themselves justify a conclusion of irrevocable commitment. Such single factor reliance may especially be true of factors one (adjacent uses) and two (parcel size and ownership patterns on neighboring property)."

[7] LCDC Determination, Part II, Section 3 and 4 requested the following changes:

> "3. Page 15, line 4, delete "neighboring property."
>
> "4. Page 15, line 5, add the words "in and" after the word 'ownership.'

LUBA's text, without regard to the above, read as follows:

"Parcel Size and Ownership Patterns on Neighboring Property

"Findings regarding parcel size and ownership adjacent to these areas * * * *"

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8 The Land Conservation and Development Commission's Determination of May 7, 1981 stated:

"3. Page 16 - delete sentence starting at line 8.

"4. Page 16 - line 11, delete 'therefore'.

"5. Page 16 - line 12, add 'the subject and the' after the word "of".

"6. Page 16, line 16, add to the end of the sentence 'and therefore satisfies a conclusion that the land is build [sic] upon.'

"7. Page 16 delete paragraph at lines 17-23."

The LUBA Revised Proposed Opinion with regard to the above originally read as follows:

"The irrevocable commitment test focuses on activities taking place on and characteristics of surrounding properties which impact the subject parcel. The general rule is, therefore, that to be relevant, the factors considered must relate to activities on or characteristics of surrounding property which prevent the use of the subject site as goal 3 or 4 land. The exception to the general rule is found in circumstances where actual development has taken place on the subject property (See discussion infra).

"Factors other than development which relate entirely to the subject parcel, such as soil classification, and topography do not focus on surrounding lands and are, therefore, not relevant to the question of commitment. They are factors which could be used to support a conclusion that the subject property is not goal 3 or 4 resource land. Reliance on the committed test is unnecessary in such a situation."

[9] LCDC's Determination of 5/7/81, Section 8 read as follows:

> "8. Page 17 amend lines 15-18 to read "We find item (3) is not relevant to an application of the irrevocable commitment test." The Commission interpreted item 3 on page 17 as referring to soil capability classification as set forth in Goal 3, and, therefore, not relevant to the application of the irrevocable commitment test.

LUBA Revised Proposed Opinion originally stated as follows:

> "We find that items (3) and (5) are not relevant to an application of the irrevocable commitment test. They focus on characteristics of the subject property (other than its physical development) rather than on the surrounding property."

[10] LCDC Determination, Part I, No. 9 stated:

> "9. Page 18 amend the sentence starting at line 17 to read, 'The remaining factors considered by the county fit within one of the categories determined by LCDC to be necessary characteristics for consideration in applying the committed test.'"

Previous to the above change, LUBA's Revised Proposed Opinion read:

> "Considering the remaining factors considered by the county, i.e. 1, 2, 4, 6, 7, 8 and 10 (supra) all but items no. 2 (development on contested property) and 4 (recent farming history of the property) fit within one of the five categories determined by LCDC to be necessary characteristics for consideration in applying the committed test. Common Questions Concerning the Exceptions Process, supra."

[11] Part I, Section 10 of LCDC's Determination states as follows:

> "10. Page 18 delete everything after word 'property' at line 25, through the end of the sentence on line 3, page 19."

LUBA's Revised Proposed Opinion originally read:

> "Item No. 2 relates to activity taking place on the subject property and as such does not fit easily within the committed tests' focus on surrounding property. Development on the contested property, however, unlike items 3 (soil quality) and 5 (topography), does not relate to the capacity of the land itself to achieve the purposes of goals 3 or 4. * * * *"

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[12] The following changes were made by LCDC in their determination of 5/7/81:

> "11. Page 19, line 12, amend to read "Item No. 4 (farming history) may be relevant if it clearly supports the conclusion of irrevocable commitment.
>
> "12. Page 19 delete sentence starting on line 15 through lne 18.
>
> "13. Page 19 amend sentence starting on line 19 to read 'Of the ten "factors of consideration" used by Clackamas County Items 2, 4 and 5 fit into the "other relevant factor's' category."

Prior to the above changes, LUBA's original text read as follows:

> "Item no. 4 (farming history) may be relevant if there is shown to be a logical nexus between farming history on the subject property and activities on and characteristics of land surrounding the subject property. If no nexus is shown, however, such a factor would be irrelevant to the committed test and should fall within the same classification as items 3 (soil classification) and 5 (topography) (see discusion supra).
>
> "Therefore, of the 10 'factors of consideration' used by Clackamas County in determining whether commitment exists on the contested parcels only item no. 2 (development on the contested property) and in certain circumstances item no. 4 (recent farming history of the property) fit within the 'other relevant factors' category."

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13 LCDC's 5/7/81 Determination stated "Page 20 strike the sentence starting at line 5 through line 9." The deleted portion previously read:

> "Clackamas County "factors of consideration" 1, 2, 6, 7, 8, 10 and in certain circumstances 4 fit within these categories and findings related to those "factors of consideration" were reviewed in reaching our decision (infra) on each of the parcels contested by petitioners."

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14 Part I, Section 15 of LCDC's 5/7/81 Determination mandated the deletion of the word "surrounding" on page 21, line 13 of the Revised Proposed Opinion. This sentence read as follows:

> "The distinction drawn by Petitioner 1000 Friends is not necessary if the local governing body failed to sufficiently consider all relevant activities taking place on and characteristics of surrounding lands in order to arrive at a conclusion of irrevocable commitment."

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15 The final amendment by LCDC was as follows:

> "2. Page 21, line 15 amend by changing the word "potential to read "reasonably possible."

LUBA's original text with regard to the above read as follows:

> "The findings used to support such a conclusion must be such to exhaust all potential agricultural or forest uses of the subject property as was discussed supra."

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, Petitioner(s), v. CLACKAMAS COUNTY, Respondent.	)	LUBA 80-060 LCDC Determination

The Land Conservation and Development Commission hereby adopts the proposed opinion and order of the Land Use Board of Appeals in 1000 Friends of Oregon v. Clackamas County, LUBA 80-060, with the following modifications:

I. In regard to "other relevant uses," the opinion and order should include discussion of the subject parcel itself as a relevant factor in determining "irrevocable commitment" to justify a Goal 2 exception, and should be modified as follows:

1. Page 14, line 13, add at the end of the sentence "however, factors relating to the subject parcel itself cannot alone justify a conclusion of irrevocable commitment."

2. Page 14, line 13 to 16 - amend to read "Example of factors which may by themselves justify such a conclusion are factors (a) (adjacent uses) and (b) (parcel size and ownership patterns).

3. Page 16 - delete sentence starting at line 8.

4. Page 16 - line 11, delete "therefore".

5. Page 16 - line 12, add "the subject and the" after the word 'of'.

6. Page 16, line 16, add to the end of the sentence "and therefore satisfies a conclusion that the land is build upon."

7. Page 16 delete paragraph at lines 17-23.

8. Page 17 amend lines 15-18 to read "We find item (3) is not relevant to an application of the irrevocable commitment test." The Commission interpreted item 3 on page17 as referring to soil capability classification as set forth in Goal 3, and, therefore, not relevant to the application of the irrevocable commitment test.

9. Page 18 amend the sentence starting at line 17 to read, "The remaining factors considered by the county fit within one of the categories determined by LCDC to be necessary characteristics for consideration in applying the committed test."

10. Page 18 delete everything after word 'property' at line 25, through the end of the sentence on line 3, page 19.

11. Page 19, line 12, amend to read "Item No. 4 (farming history) may be relevant if it clearly supports the conclusion of irrevocable commitment."

12. Page 19 delete sentence starting on line 15 through line 18.

13. Page 19 amend sentence starting on line 19 to read 'Of the ten "factors of consideration" used by Clackamas County Items 2, 4 and 5 fit into the "other relevant factor's' category.

14. Page 20 strike the sentence starting at line 5 through line 9.

15. Page 21, line 13, strike the word "surrounding".

II. The language discussing the factor concerning parcel size be amended as follows:

1. Page 14, line 2, delete "on neighboring property"

2. Page 14, line 15-16, delete "neighboring property".

3. Page 15, line 4, delete "neighboring property."

4. Page 15, line 5, add the words "in and" after the word 'ownership.'

III. The language concerning consideration of agricultural and forest uses for the subject property be amended as follows:

1. Page 9, line 13, add the words "reasonably possible" after the word 'all'.

2. Page 21, line 15, amend by changing the word "potential" to read "reasonably possible".

Dated this 7th day of May, 1981

W. J. Kvarsten, Director
For the Commission

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