

JAN 6 9 24 AM '84

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

1  
2  
3 BLAISE GRDEN, )  
4                    Petitioner, )  
5                    v.                    )  
6 UMATILLA COUNTY, )  
7                    Respondent,                    )  
8 CHRISTIAN RAINBOW CENTER, )  
9 ROBERT A. KLICKER, NANCY L. )  
10 KLICKER, RICHARD J. KLICKER, )  
11 and MARY ALICE KLICKER, )  
12                    Participants- )  
13                    Respondents.                    )

LUBA No. 83-073

FINAL OPINION  
AND ORDER

12 Appeal from Umatilla County.

13 Robert L. Liberty, Portland, filed the Petition for Review  
14 and argued the cause on behalf of Petitioners.

15 John U. Grove, Milton-Freewater, filed a response brief and  
16 argued the cause on behalf of Participants-Respondents.

17 Umatilla County did not appear.

18 KRESSEL, Referee; BAGG, Chief Referee; DuBAY, Referee;  
19 participated in this decision.

20 REVERSED

01/06/84

21 You are entitled to judicial review of this Order.  
22 Judicial review is governed by the provisions of Oregon Laws  
23 1983, ch 827.

24 This opinion was modified by LCDC in its determination of  
25 December 28, 1983. Material deleted by the Commission is  
26 bracketed and the material added is underlined.

1 Opinion by Kressel.

2 NATURE OF THE DECISION AND FACTS

3 Petitioner appeals the allowance of a conditional use  
4 permit for a church retreat center on land zoned for forest  
5 use. A previous approval of the same use was remanded by this  
6 Board in Allen, et al v. Umatilla County, \_\_\_\_\_ Or LUBA \_\_\_\_\_  
7 (LUBA No. 82-076, May 5, 1983). The remand directed the county  
8 to consider the relationship of the proposal to certain  
9 criteria governing approval of non-forest uses on forest lands  
10 under statewide planning goal 4.

11 The proposed retreat center would occupy a five acre site.  
12 A 5,000 square foot lodge capable of accomodating up to 60  
13 overnight visitors would be constructed. There is evidence in  
14 the record that the center would be used mostly on weekends by  
15 groups of between 20 and 30 people. Record 133. The average  
16 daily use would be about 11 persons.

17 The site would be leased from the owner of a 389 acre  
18 parcel, most of which is or has been used for timber  
19 production. The county found that 80 percent of the five acres  
20 is capable of timber production. The building site, which is  
21 about .9 acres in size, consists of unproductive land, although  
22 it could be used for grazing. Indeed, the lease reserves  
23 grazing rights to the lessor and provides for fencing and  
24 cattle guards to assure continued grazing. Record 140.  
25 Construction of the lodge would require removal of no trees.  
26 No new roads would be required to be built because the site is

1 accessible by an existing logging road.

2 Adjacent land uses consist of the balance of the lessor's  
3 timber tract, a Kiwanis Camp and a 115 lot residential  
4 subdivision, most of which is occupied. Land to the north of  
5 the site includes a rock quarry.

6 The entire area is zoned F-5 Forest (5-acre minimum) and is  
7 designated for forest use under the county's comprehensive  
8 plan. LCDC has not yet acknowledged the plan.

9 When this case previously reached LUBA, allowance of the  
10 permit was challenged under Goal 4 (Forest Lands). The  
11 applicant answered the Goal 4 challenge by arguing the  
12 limitations of the goal were not applicable because the area  
13 was so developed as to be "lost for forest production." It was  
14 also argued that even if Goal 4 did apply, the low intensity  
15 conditional use would be compatible with nearby forest uses.  
16 An argument added by the county, but rejected by this Board,  
17 was that no Goal 4 problem was presented because the approved  
18 use was an "outdoor recreational activity" (an allowable forest  
19 use as defined by Goal 4).<sup>1</sup>

20 In response to these contentions the Board concluded that  
21 the county's findings were too general and failed to  
22 demonstrate that Goal 4 was inapplicable to the land in  
23 question. Allen, supra, Slip Opinion at 6. Accordingly, the  
24 matter was remanded for specific findings on the various  
25 components of the goal. Moreover, the Board noted that the  
26 proposal should be classified as a non-forest use, allowable

1 under Goal 4 only after consideration of the kinds of  
2 protective standards enunciated in Publishers Paper Co. v.  
3 Benton County, 6 Or LUBA 182, 186 (1982).<sup>2</sup>

4 On review of the Board's proposed order in Allen, LCDC  
5 generally concurred in the results. However, the commission  
6 made changes in the standards governing approval of nonforest  
7 uses under Goal 4. In pertinent part, the adopted final order  
8 stated as follows:

9 "[w]e believe in order to allow such a non-forest use  
10 other than a dwelling in forest lands, the county  
11 where it differentiates between predominate [sic]  
12 forest areas and mixed forest use areas, must apply in  
13 such mixed forest use areas standards like those  
14 contained in the Benton County ordinance reviewed by  
15 us in the case of Publishers Paper v. Benton County.  
16 6 Or LUBA 182 (1982). To allow nonforest uses in a  
17 mixed use forest area, the county must apply standards  
18 upon a showing that the proposed use

- 15 "a. Is compatible with forest uses;
- 16 "b. Does not seriously interfere with accepted forest  
17 practices on adjacent lands;
- 18 "c. Does not alter the stability of surrounding land  
19 use patterns;
- 20 "d. Is situated on lands least suitable for forest  
21 production consider the terrain, adverse soils or  
22 land conditions, drainage and flooding,  
23 vegetation, location and size of tract, and the  
24 cost of roads, power and telephone lines \* \* \* \*  
25 See Publishers Paper v. Benton County, 6 Or LUBA  
26 182, 186 (1982)."

23 "However, the standards set forth in the Publishers  
24 case are insufficient to protect forest lands in all  
25 cases in light of the Court of Appeals decision in  
26 Shadybrook v. Washington County, 61 Or App 474  
(1983). Where the County does not distinguish between  
predominate and mixed use forest areas, allowance of a

1 non-forest use must be based upon a stricter  
2 standard. Such a standard allowing non-forest uses in  
3 predominate forest areas must demonstrate that the  
4 land is 'not suitable' for forest uses as opposed to  
5 lands which are 'least suitable.' The record must  
6 clearly show 'the retention and protection of forest  
7 land' (see Shadybrook v. Washington County, 61 Or App  
8 474, 482 (1983))." Allen v. Umatilla County, LUBA No.  
9 82-076 at 9.

10 In response to the final order in Allen, the county  
11 reopened the record and adopted additional findings of fact in  
12 support of permit approval. Petitioner in this appeal  
13 challenges the legal sufficiency of the findings under Goal 4  
14 as well as the sufficiency of the evidence underlying the  
15 findings. Petitioner seeks reversal rather than another remand  
16 of the decision. In his view, Goal 4 precludes approval of  
17 this use on this site given the facts contained in the  
18 record. Petitioner also claims that the permit violates a  
19 county plan policy limiting development on steep slopes.

#### 20 APPLICABLE STANDARDS

21 Since petitioner challenges the county's decision under  
22 Goal 4, an initial determination must be made as to whether the  
23 land in question is forest land as defined by the goal. The  
24 county's new findings do not state a position on this point.  
25 However, the findings do state that "4.1 of the 5 acre tract is  
26 capable of timber production" and that there "are presently  
18,500 board feet of merchantable timber on the 4.1 acres."  
Record 2. These findings, combined with the plan designation  
of the land as "forest lands," suggest that Goal 4 should be  
applied to the permit. The fact that the five acre site is

1 part of a much larger parcel which is or has been used for  
2 commercial timber production also supports the conclusion that  
3 the land is within the goal's first definition of "forest  
4 lands." Cf. Lemmon v. Clemens, 57 Or App 583, 588, 646 P2d 633  
5 (1982) (in determining agricultural suitability under Goal 3,  
6 it is not sufficient to merely consider the particular parcel  
7 sought to be rezoned; the entire tract in one ownership must be  
8 considered).

9 In Allen, supra, the Board determined the proposed retreat  
10 center must be classified as a nonforest use. As pointed out  
11 in the final opinion in Allen, the standards governing approval  
12 of a nonforest use (other than a dwelling) depend on whether  
13 the area is designated by the county as a "predominate [sic]  
14 forest area" or a "mixed use forest area" (i.e. a mixture of  
15 forest and agricultural uses). Although the first three  
16 approval standards are the same in both situations, the final  
17 standard (whether the use is situated on land "least suitable  
18 for forest production") applies only in the case of a mixed  
19 forest use area. As stated in Allen, a stricter standard  
20 concerning the nature of the land supporting the use must be  
21 employed in "predominate [sic] forest areas." Under the  
22 stricter standard, a nonforest use can be approved only on land  
23 which is "not suitable" for forest uses. The "record must  
24 clearly show the retention and protection of forest lands."  
25 Allen v. Umatilla County, LUBA no. 82-076, LCDC Determination  
26 at 9, (April 29, 1983).

1 On remand of Allen, the county did not adopt a position on  
2 the question of whether the area subject to the permit is  
3 predominantly forest use or in mixed use. Although  
4 participants-respondents argue for application of the more  
5 liberal standard on grounds that the mixed use classification  
6 is appropriate, the Board rejects this argument. First, the  
7 final order in Allen (quoted at page 4, supra) made it clear  
8 that the more liberal standard should be applied only where the  
9 county distinguishes between areas where forests use  
10 predominates and mixed use forest areas. Here, the county has  
11 made no such distinction. Second, although a precise  
12 definition of a "mixed use" area has not yet been developed,  
13 the facts in this case show little or no mixed resource use.  
14 Timber production is clearly predominates as the resource  
15 use.<sup>3</sup> The Board concludes, therefore, that the strict  
16 "unsuitability" standard applies to this nonforest use of  
17 forest land.

18 FIRST ASSIGNMENT OF ERROR

19 Petitioner focuses attention first on the relationship of the  
20 proposal to the "unsuitability" standard described above. He  
21 points out that since 80 percent of the five acre site was found  
22 by the county to be capable of timber production, the land can  
23 not be considered "unsuitable" for forest use. Accordingly,  
24 petitioner argues that the permit must be disallowed.

25 Participants-respondents meet this argument by observing  
26 that construction will take place only on the unproductive

1 portion of the site (.9 acres) and that the low intensity  
2 nature of the use will not disturb the remaining productive  
3 land. Accordingly, they argue in favor of a narrow reading of  
4 the unsuitability standard and would focus attention instead on  
5 the compatibility of the use with its surroundings.

6 The Board agrees with petitioner that the relevant subject  
7 under this standard is the suitability for forest use of the  
8 entire site governed by the permit. The proposal is for a five  
9 acre retreat, not merely for a structure on .9 acres. Although  
10 the use is concededly one of low intensity, it is nonetheless a  
11 nonforest use of the five acre site.

12 The Board's interpretation of the suitability standard in  
13 this case is governed by an understanding that the overall  
14 purpose of Goal 4 is the retention of forest land for forest  
15 uses. That overall purpose must be kept in mind when  
16 establishment of any nonforest use is proposed. Shadybrook  
17 Environmental Protection Assn. v. Washington County, 61 Or App  
18 474, 482, 658 P2d 168 (1983). Acceptance of the narrow reading  
19 proposed by the participants-respondents, while attractive in  
20 the present case, could easily result in the gradual diminution  
21 of valuable resource lands. Myriad nonforest uses could be  
22 expected to spring up on small, unproductive building sites  
23 located on larger parcels containing valuable timber land. In  
24 time, these uses could well make a much larger presence known,  
25 to the detriment of the values reflected in Goal 4. The Board  
26 notes also, in support of its interpretation, that in analogous



1 cases arising under Goal 3 (Agricultural Lands) the Court of  
2 Appeals has read the law so as to maximize the retention and  
3 continuation of existing resource uses. Accordingly, the  
4 county has insisted that small parcels should not be put to  
5 non-agricultural use if combination with adjacent agricultural  
6 operations is possible. See e.g. Rutherford v. Armstrong, 31  
7 Or App 1319, 572 P2d 1331 (1977); Meyer v. Lord, 37 Or App 59,  
8 586 P2d 367 (1978); Lemmon v. Clemens, supra, 57 Or App 583  
9 (1982).

10 The above points lead the Board to sustain petitioner's  
11 first assignment of error. Viewed as a whole, the site  
12 governed by the permit consists of lands which are suitable for  
13 forest use.<sup>4</sup> Accordingly, issuance of the permit violated  
14 Goal 4 and is subject to reversal.<sup>5</sup> OAR 661-10-070(1)(A)(3).

15 SECOND AND THIRD ASSIGNMENTS OF ERROR

16 The county found the proposed retreat would be compatible  
17 with forest uses and would not seriously interfere with  
18 accepted forest practices on adjacent lands. It is not  
19 disputed that these were appropriate Goal 4 considerations in  
20 the county's review of the nonforest use. However, petitioner  
21 maintains that the county's findings are too general and are  
22 unsupported by substantial evidence. Indeed, petitioner argues  
23 that the only relevant and credible evidence in the record on  
24 these points demonstrates the opposite of the county's  
25 findings, i.e. the proposal will be incompatible with forest  
26 uses and will seriously interfere with forest practices.

1 The pertinent findings read as follows:

2 "A. The construction and use of a retreat lodge is  
3 compatible with the forest uses. The existence and  
4 use of the retreat will not change the forest  
5 production and potential on the 5 acre tract. With  
6 the adoption of the uneven age management plan more  
7 fiber will be produced than under the existing plan.  
8 Adopting and carrying out such a plan has been made  
9 another condition of the approval of this conditional  
10 use. (Exhibit #3 and the testimony of Wesley  
11 Slaughter, the forester)

12 "B. The proposed use will not interfere in any way  
13 with the existing and accepted forest practices on  
14 adjacent lands. The adjacent lands to the south, east  
15 and northwest are committed to non-forest uses. The  
16 lands to the west and northwest have some forest  
17 production potential that will not in any way be  
18 affected by the proposed use. Existence of the  
19 building and applicants use will not affect removal of  
20 trees from the adjacent areas. The building and use  
21 will not affect the growth of the forests on the  
22 adjacent areas. (Exhibit #3 and the testimony of  
23 Wesley Slaughter, the forester)" Record 4.

24 1. Compatibility

25 As the Board reads the finding on compatibility (5A), the  
26 county is saying the establishment of the retreat center will  
not perceptibly alter the nature of the five acre site as  
wooded, timber producing land. In fact, the finding suggests  
the land will be more productive, and, therefore, presumably  
more compatible with forest uses, after establishment of the  
retreat. This greater productivity will presumably come about  
because of the county's insistence that the permit applicant  
implement "an uneven age timber management plan."

Although the county's finding on compatibility is not  
objectionable as far as it goes, it does not go far enough to  
withstand petitioner's challenge. The Board is not informed,

1 for example, of what the county understands to be the actual  
2 impacts of the proposed center itself. The Board believes that  
3 a 5,000 square foot lodge, capable of housing 60 overnight  
4 guests at a time can be described in terms of specific  
5 operating characteristics - characteristics which might or  
6 might not create conflicts with adjacent resource uses. The  
7 Board notes, for example, that the average expected use of the  
8 facility is 11 persons per day. Record 133. However, the  
9 county's findings do not discuss this figure or its  
10 significance in terms of land use impact. Nor is the Board  
11 aware of how the figure concerning use compares, for example,  
12 with the nearby use of the Kiwanis Camp. Discussion of these  
13 factors in the findings would permit our review of the county's  
14 very general conclusion that the use will be compatible with  
15 forest uses.

16 With reference to the county's finding that the "existence  
17 and use of the retreat will not change the forest production  
18 and potential on the 5 acre tract", the Board notes that the  
19 statement may ultimately be correct. However, without  
20 explanatory findings of fact, the Board is not able to accept  
21 it as sufficient in terms of the compatibility standard  
22 articulated in Allen, supra, and Publishers Paper, supra.

## 23 2. Non-Interference with Forest Practices

24 The above noted defect in the county's findings concerning  
25 compatibility is shared by the county's findings (5B)  
26 concerning non-interference with forest practices on adjacent

1 lands. Without a description of the operational  
2 characteristics of the use and the associated land use impacts,  
3 there is no way of knowing the basis for the county's rather  
4 broad conclusion that "the proposed use will not interfere in  
5 any way with the existing and accepted forest practices on  
6 adjacent lands" (emphasis added). Record 4. Moreover, review  
7 of the decision is made especially difficult by the county's  
8 failure to identify the existing and accepted forest practices  
9 on those lands adjacent to the site which are in forest use.  
10 The Goal 4 standard on non-interference requires such  
11 identification.

12 This holding does not mean the county could not make valid,  
13 sustainable findings on these points. Rather, such findings  
14 have not been made in the record under our review.

15 Given the above discussion, it is unnecessary to discuss  
16 petitioner's claim that the record does not contain substantial  
17 evidence of compatibility and non-interference with adjacent  
18 forest uses. Until adequate findings have been made, a review  
19 for supporting evidence would be futile. Hoffman v. Dupont, 49  
20 Or App 695, 621 P2d 63 (1980).

21 On the other hand, the Board is in a position to reject  
22 petitioner's related arguments that the record affirmatively  
23 establishes the incompatibility of the proposed center with  
24 forest uses and that it will interfere with adjacent forest  
25 practices. These contentions are based chiefly on petitioner's  
26 prediction that guests of the center will inevitably object to

1 neighboring forest uses, including use of the logging road  
2 which will be shared by the center and by commercial timber  
3 interests. The Board has previously refused to give much  
4 weight to mere predictions of conflict between nonforest uses  
5 and nearby forest lands. Publishers Paper Company v. Benton  
6 County, supra, 6 Or LUBA 182, 186-187 (1982). Here, petitioner  
7 asks the Board to give controlling weight to such predictions.  
8 The Board will not do so.<sup>6</sup> Moreover, petitioner's request  
9 for reversal on this ground improperly invites this Board to  
10 engage in the weighing of facts and circumstances, a function  
11 reserved by law to the county. 1983 Or Laws, ch 827, sec  
12 31(11).

13 This assignment of error is sustained and justifies a  
14 remand of the decision to the county.

15 FOURTH ASSIGNMENT OF ERROR

16 Petitioner next challenges the sufficiency of and the  
17 evidentiary basis for the county's findings concerning the  
18 third standard identified in Allen, supra, i.e. does the use  
19 alter the stability of surrounding land use patterns? The  
20 county's findings on this question are as follows:

21 "C. The land use pattern as set forth in sub  
22 paragraph B above will not be altered by the proposed  
23 use. The proposed use blends with the non forest uses  
24 of the Kiwanas [sic] Camp and the residential uses of  
25 the Mill Creek Glen areas which are adjacent.  
26 (Exhibit #3 and the testimony of Wesley Slaughter, the  
forester, and Duane Bilmore, the general contractor)"  
Record 4.

It is not immediately clear to this Board how the

1 "blending" of the proposed center with existing nonforest uses  
2 relates to the critical inquiry triggered by this Goal 4  
3 standard: Will the new use change the balance between resource  
4 uses and nonresource uses in the area? Given that the overall  
5 purpose of the goal is the retention of productive forest land,  
6 the "blending" together of various nonforest uses would seem to  
7 be an undesirable phenomenon. On the other hand, the county's  
8 reference to "blending" may simply be a way of signifying that  
9 the proposed use will be of such low intensity that it will  
10 have no or minimal impact on the resource/ nonresource  
11 balance. This is not an unreasonable reading of the county's  
12 finding, taken as a whole. The Board will give it that  
13 reading. Alluis v. Marion County, 7 Or LUBA 98, 102 (1983).

14 Nonetheless, the finding shares the defect those previously  
15 discussed. Since the county has not indicated what the  
16 operational characteristics of this new use will actually be,  
17 the finding of insignificant impact on the surrounding land use  
18 patterns lacks a foundation. This lack of a factual basis is  
19 particularly a problem in light of petitioner's own testimony  
20 before the county commission that the expected average rate of  
21 usage of the center will tip the balance in the area in favor  
22 of nonresource use. Accordingly, the Board sustains this  
23 assignment of error and remands the issue to the county for  
24 more complete findings.

25 FIFTH ASSIGNMENT OF ERROR

26 In this assignment of error, petitioner takes issue with

1 LCDC's prior determination in Allen, supra, that in "mixed use  
2 areas," nonforest uses (other than dwellings) may be sited on  
3 land found to be "least suitable" for forest use rather than on  
4 land "unsuitable" for forest use. However, in view of the  
5 Board's determination that the mixed use standard is not  
6 applicable to this conditional use permit, and was not even  
7 invoked by the county in support of the decision challenged  
8 here, it is unnecessary to discuss this claim.

9 SIXTH ASSIGNMENT OF ERROR

10 Petitioner's last argument concerns the relationship  
11 between the proposed project and the county's plan policy  
12 prohibiting development on slopes of 25 percent or greater.  
13 After the Allen case was remanded to the county, the following  
14 finding on this issue was adopted:

15 "6. The proposed building will not conflict with  
16 Umatilla County Comprehensive Plan Policy prohibiting  
17 development on slopes of 25% or greater. The building  
18 will be located on a bench whose slope from the upper  
19 most point to the lower most point of the building is  
20 23 to 24%. Most of the building will be located on a  
slope of approximately 12%." (Exhibit #1, the map of  
site and Exhibit #2, profile map of slope, testimony  
of Keith Olson, the engineer, Wesley Slaughter, the  
forester, and Duane Gilmore, the general contractor).  
Record 5.

21 Petitioner first challenges the evidentiary basis for the  
22 finding that "most of the building will be located on a slope  
23 of approximately 12%." However, since the pertinent plan  
24 policy establishes 25 percent as the maximum slope for  
25 development, the Board rejects this challenge.

26 There is substantial evidence in the record to support the

1 county's finding that the retreat building will be constructed  
2 on a slope of between 23 percent and 24 percent. A consulting  
3 engineer gave testimony to this effect at the county's hearing  
4 on remand of the Allen case. Record 9-10. Petitioner  
5 nonetheless objects that the slope calculation improperly  
6 included steep land that had been previously leveled by the  
7 participants-respondents. However, even assuming this method  
8 to calculate the slope was used, it does not detract from the  
9 validity of the county's finding of compliance. The issue is  
10 whether the record contains believable evidence that  
11 development will take place on a slope of less than 25  
12 percent. There is such evidence. There is no basis for  
13 overruling the county's decision to recognize man-made  
14 alterations to the slope of the building site.<sup>7</sup>

15 Finally, petitioner argues that the plan policy requires  
16 consideration of the slope of the entire five acre parcel, not  
17 just the building site. We are not informed of the exact  
18 language of the policy, but the parties agree that it prohibits  
19 development on slopes greater than 25 per cent. The County  
20 concluded that the policy required consideration only of the  
21 slope of the building site. We defer to the county's  
22 reasonable interpretation of its own plan policy. Miller v.  
23 City Council of Grants Pass, 39 Or App 589, 594, 592 P2d 1088  
24 (1979); Alluis v. Marion County, 7 Or LUBA 98, 103 (1982).  
25 This assignment of error is denied.

26 //



1 CONCLUSION

2 In this case the county approved a nonforest use of forest  
3 land as defined by Goal 4. The county did not find that the  
4 area in question was one of mixed use. Rather, the record  
5 supports the conclusion that the area is predominantly in  
6 forest use. Accordingly, the approval standards enunciated in  
7 Allen v. Umatilla County, supra, are applicable, including the  
8 stringent requirement that the proposed use must be situated on  
9 land unsuitable for forest use.

10 There is substantial evidence in the record that the  
11 five-acre site of the proposed use, considered as a whole, is  
12 suitable for [some] forest use[s]. [listed in Goal 4.]  
13 Accordingly, one approval standard governing this nonforest use  
14 can not be satisfied. Reversal is in order.

15 The county's findings pertaining to the other applicable  
16 approval standards are overly general. Findings specifically  
17 describing the manner in which operation of the retreat center  
18 will relate to surrounding lands and land uses should be made.  
19 The deficiency in these findings merits a remand of the  
20 decision to the county, not reversal.

21 Substantial evidence supports the county's finding that its  
22 plan policy concerning development on steep slopes is satisfied  
23 in this case.

24 This matter is reversed.  
25  
26

FOOTNOTES

1  
2  
3 <sup>1</sup>

Under Goal 4 "Forest Uses" are:

4 "(1) the production of trees and the processing of  
5 forest products; (2) open space, buffers from noise,  
6 and visual separation of conflicting uses; (3)  
7 watershed protection and wildlife and fisheries  
8 habitat; (4) soil protection from wind and water; (5)  
9 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 <sup>2</sup>

The standards require findings that the use

- 11 "a. Is compatible with forest uses;  
12 "b. Does not seriously interfere with accepted forest  
13 practices on adjacent lands;  
14 "c. Does not alter the stability of surrounding land  
use patterns;  
15 "d. "Is situated on lands least suitable for forest  
16 production considering the terrain, adverse soils  
17 or land conditions, drainage and flooding,  
18 vegetation, location and size of tract, and the  
cost of roads, power and telephone lines \* \* \*  
\*" See Publishers Paper v. Benton County, 6 Or  
LUBA 182, 186 (1982).

19  
20 <sup>3</sup>

The record contains evidence that the five acre site is  
suitable for grazing, a use included within the definition of  
forest uses in Goal 4.

21  
22  
23 [<sup>4</sup>

In any event, acceptance of the interpretation advocated by  
participants-respondents would not change the result in this  
case. Although the .9 acre building site is unsuitable for one  
of the forest uses listed in the goal (timber production), it  
is suitable for another (grazing). Thus, the entire site is  
suitable for forest use.]

1 [5

2 This interpretation of the suitability standard makes clear  
3 the stringency of the Allen test for approval of nonforest uses  
4 (other than dwellings) in areas predominantly in forest use.  
5 Under the test, the only lands available for nonforest uses are  
6 those which are actually outside the very broad definition of  
7 "forest lands" in Goal 4. Only such lands could qualify as  
8 being "unsuitable for forest use."

9 It is unlikely that many parcels in rural resource areas  
10 will meet the above test. This is especially true if the test  
11 requires consideration, not only of the parcel on which the use  
12 will be located (here, the five-acre parcel leased by the  
13 church) but also adjacent lands (the lessor's 384 acre timber  
14 tract) which might be used in conjunction with that parcel for  
15 "forest use." That aspect of the test need not be decided in  
16 this case. However, there is appellate authority which at  
17 least suggests that consideration of the smaller parcel in  
18 relation to the larger one might well be required. Rutherford  
19 v. Armstrong, 31 Or App 1319, 572 P2d 1331 (1977). This would  
20 seemingly tighten down the "suitability" standard so far as to  
21 nearly cut off chances for siting nonforest uses in areas where  
22 forest use predominates.

23 There is room for introduction of a more flexible standard  
24 under Goal 4. The Board notes that after this Board issued its  
25 recommended decision in Allen, supra (which referred to the  
26 "lands-found-to-be-least-suitable" test, rather than the strict  
27 test of unsuitability later embraced by the commission), the  
28 Court of Appeals handed down its decision in Publishers Paper  
29 Co. v. Benton County, 63 Or App 632, \_\_\_ P2d \_\_\_ (1983). It  
30 is noteworthy that this Goal 4 decision sanctioned the use of  
31 standards for approval of nonforest uses which made no  
32 reference whatsoever to the unsuitability test. Rather, the  
33 Goal 4 standards sanctioned by the Court in Publishers Paper  
34 Company were as follows:

- 35 "1. The proposed use is compatible with and will not  
36 significantly affect existing forest uses on the  
37 site or surrounding land;
- 38 "2. The proposed use will not interfere with forest  
39 operations and practices;
- 40 "3. The proposed use will not alter the stability of  
41 the overall land use pattern in the area; and
- 42 "4. The proposed use is consistent with forest  
43 policies in the comprehensive plan and the  
44 purposes of the zone."

1 Thus, if the commission finds the present test of unsuitability  
2 to be overly strict, there is authority to support use of a  
3 more flexible approach, one focusing on the consistency between  
the proposal and forest policies in the comprehensive plan and  
zoning code.]

4 \_\_\_\_\_  
[6]4

5 Petitioner does give one example of incompatibility which  
6 has evidentiary support in the record. He points out that the  
7 lessor of the 5 acre parcel intends to allow a buffer of  
8 diseased trees to remain on adjacent land for "aesthetic  
9 reasons" (i.e. for the benefit of visitors of the retreat).  
Presumably, such a buffer would not be maintained were it not  
10 for the presence of the nonforest use. Although this  
constitutes evidence of incompatibility with forest uses, it  
11 fails considerably short of proof of such incompatibility. The  
12 county's failure to address the issue under Goal 4 was error  
13 but the failure itself does not warrant reversal as a matter of  
14 law.

15 \_\_\_\_\_  
[7]5

16 Any potential tort liability issues raised by the county's  
17 slope calculation are not within the jurisdiction of this  
18 tribunal.  
19  
20  
21  
22  
23  
24  
25  
26



## STATE OF OREGON

## INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION      DATE: 11/30/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: GRDEN V. UMATILLA COUNTY  
LUBA NO. 83-073

Enclosed for your review is the Board's proposed opinion and order in the above captioned appeal.

This case is about a proposed non-forest use on forest land. You have seen these same facts before in Allen v. Umatilla County, LUBA No. 82-076.

Because the Board finds the land to be forest land, the Board applied the standards listed in Allen, supra. Under the Allen standards, the proposed use is not permissible because it is on land suitable for forest use.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



Contains  
Recycled  
Materials

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

3 BLAISE GRDEN,                                   )  
  )  
4                   Petitioner,                                   )           LUBA NO. 83-073  
  )  
5           v.    )           PROPOSED OPINION  
  )                   AND ORDER  
6 UMATILLA COUNTY,                                   )  
  )  
7                   Respondent,                                   )  
  )  
8 CHRISTIAN RAINBOW CENTER,                                   )  
ROBERT A. KLICKER, NANCY L.                                   )  
9 KLICKER, RICHARD J. KLICKER,                                   )  
and MARY ALICE KLICKER,                                    )  
10    )  
                                  Participants-                                    )  
11                                   Respondents.                                    )

12           Appeal from Umatilla County.

13           Robert L. Liberty, Portland, filed a petition for review  
and argued the cause for Petitioners.

14           John U. Grove, Milton-Freewater, filed a brief and argued  
15 the cause for Participants-Respondents.

16           Umatilla County did not appear.

17           Bagg, Board Member.

18   11/30/83

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

LAND USE  
BOARD OF APPEALS

DEC 28 4 25 PM '83

BLAISE GRDEN,,	)	
	)	
Petitioner,	)	LUBA NO. 83-073
	)	
v.	)	LCDC Determination
	)	
UMATILLA COUNTY,	)	
	)	
Respondent,	)	
	)	
CHRISTIAN RAINBOW CENTER,	)	
ROBERT A. KLICKER, NANCY L.	)	
KLICKER, RICHARD J. KLICKER,	)	
and MARY ALICE KLICKER,	)	
	)	
Participants-	)	
Respondents.	)	

The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA 82-076 with the following modifications:

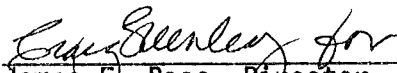
1. On page 17, line 12, delete the words in brackets as follows: "suitable for [some] forest use[s]. [listed in Goal 4]."
2. On page 18, lines 23 through 26, delete all of footnote 4.
3. On pages 19 and 20, delete all of footnote 5.
4. On page 20, renumber footnotes 6 and 7 accordingly.

The Commission concurs that suitability must be examined for the entire site governed by the permit, in this case approximately five acres. The deletion of the other portions of the opinion are made because it is unnecessary to reach these conclusions to determine this case. For the Board's information, the Commission has interpreted Goal 4 issues, particularly on the application of the "generally unsuitable" test, in recent acknowledgment decisions. (See especially Grant, Umatilla, and Coos County reviews.)

At the Commission's December 16, 1983, meeting the parties to this case agreed to an extension of time for the review of this case of ten days from the December 27, 1983, deadline until January 6, 1984.

DATED THIS 28<sup>th</sup> DAY OF December 1983.

FOR THE COMMISSION:

  
James F. Ross, Director  
Department of Land  
Conservation and Development

MR:ad  
6987B/10B