BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CHAMPION INTERNATIONAL CORPORATION, Petitioner, vs. DOUGLAS COUNTY, Respondent.	LUBA No. 87-047 FINAL OPINION AND ORDER

Appeal from Douglas County.

Steven L. Pfeiffer, Portland, filed a petition for review and argued on behalf of petitioner. With him on the brief were Stoel, Rives, Boley, Jones & Grey.

Dudley C. Walton, Roseburg, filed a response brief and argued on behalf of participant-respondents. With him on the brief were Walton, Nilsen, Walker & Johnson, P.C.

HOLSTUN, Referee; DuBay, Chief Referee; BAGG, Referee, participated in the decision.

REMANDED 10/05/87

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

Opinion by Holstun.

NATURE OF THE DECISION

Respondent county approved a conditional use permit for a single family dwelling on a 150 acre parcel planned and zoned Timberland Resource (TR).

FACTS

The 150 acre parcel owned by participant respondents (hereafter respondents) is located in the Umpqua National Forest[1]. The property is located five miles from the nearest improved county road. Access from the county road is provided by a National Forest System Road and a private road over an easement from the U.S. Forest Service.

The property is crossed by three creeks and was logged approximately 25 years ago. It contains second growth conifer timber of various ages and deciduous brush and trees. Record 11, 21. The parcel has been in private ownership for the past 20 years and during that time has received no active forest management.

The applicant plans to thin and prune existing natural second growth and clear and plant the remaining land. The property is suitable for commercial timber production. Record 214-215.

The applicant filed a request for a conditional use permit for a dwelling on the property on June 26, 1986. The planning commission first denied the request, but on remand from an appeal of that denial to the board of county commissioners, the

planning commission granted the permit. Petitioner appealed to the board of county commissioners which affirmed the planning commissions approval. This appeal followed.

PRELIMINARY MATTERS

Respondents argue in their brief that the testimony and written statements of petitioner's representative submitted to the board of county commissioners are not properly part of the record. In support of their argument, respondents cite the following:

> "(1) Review by the Board shall be confined to arguments of the parties and the record of the previous proceeding below, which will include the following:
>
> (a) All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered as evidence;
>
> (b) all materials in the record submitted by the Director with respect to the application;
>
> (c) the transcript of the hearing if required by the Board or otherwise provided, or the tape recording or other evidence of the proceeding of the hearing below; and
>
> (d) the findings and conclusions.
>
> "(2) Review by the Board shall be a de novo review of the record limited to the grounds relied upon in the notice of review, or cross review, if the review is initiated by such notice." Douglas County Land Use and Development Ordinance, Sec. 2.700.

Notwithstanding the above quoted section of the county's land use ordinance, the county accepted the challenged material as part of the record.

"In addition, we permitted the appellant to introduce

the following exhibits at the hearing on this appeal.

* * *

4. Appeal Exhibit 4 - Written copy of argument presented by Robert Graul.

We determine that testimony was received in the record from the following witnesses:

* * *

Robert Graul - Champion Internation Corporation forester." Record Page 9.

The minutes state the county allowed the testimony of petitioner's representative, Robert Graul, "as amplification of his previous testimony." Record 29.

Mr. Graul's statement is included in the record that was submitted to the Board pursuant to OAR 661-10-025. Respondents did not file an objection to the record as provided in OAR 661-01-025(3). Because the county accepted the testimony as part of the local record and respondents neither appealed that decision nor objected to the record as provided in our rules, we conclude the testimony is properly included in the record.

FIRST ASSIGNMENT OF ERROR

Petitioner alleges the county failed to adopt adequate findings supported by substantial evidence to show that the dwelling will be accessory and necessary for timber production.

Petitioner recognizes that the Land Conservation and Development Commission (LCDC) interprets Goal 4 to permit dwellings on forest land if they are "necessary and accessory" for forest use. Lamb v. Lane County, 7 Or LUBA 137 (1983).[2]

Such dwellings are termed forest dwellings.[3] Petitioner also recognizes that Douglas County has adopted plan and implementing ordinance standards that expressly permit forest dwellings. The county's plan allows forest dwellings in areas designated Timber Resource on the plan map if such dwellings "are clearly accessory and necessary for permitted uses." Douglas County Comprehensive Plan, Timberlands Policy, Implementation measure No. 1. The county's land use and development ordinance implements this policy by requiring that forest dwellings be "accessory and necessary for a use permitted by Section 3.2.050 * * *." Douglas County Land Use and Development Ordinance Section 3.2.100(3).

THE NECESSARY STANDARD

Petitioner argues that while the county recognizes a forest dwelling must be necessary, the county's definition and application of the standard is at odds with the Court of Appeals recent decision in 1000 Friends of Oregon v. LCDC (Lane Co. I) 83 Or App 278, 731 P2d 457, on reconsideration, 85 Or App 619, ___ P2d ___, rev allowed 303 Or ___ (1987).

In Lane County I, the Court of Appeals reversed and remanded LCDC's acknowledgement of the Lane County comprehensive plan. The Court remanded, in part, because it concluded the county's criteria for approval of forest dwellings were insufficient to comply with Goal 4 and the necessary and accessory test.[4]

The Court of Appeals allowed reconsideration to distinguish

its prior decision in 1000 Friends v. LCDC (Benton Co.), 72 Or App 443, 656 P2d 550 rev den 299 Or 584 (1985). In its opinion on reconsideration, the court said

> "Other acknowledged plans simply require that forest dwellings be 'necessary and accessory,' without spelling out the details. Under those plans, whether a particular dwelling meets the test will be decided on an individual basis when the county acts on an application for a building permit." 1000 Friends v. LCDC (Lane Co. II), 85 Or App 619, 622, ___ P2d ___, rev. allowed 303 Or ___ (1987).

In this case, Douglas County has no definition of "necessary" in its plan. Neither has Douglas County adopted criteria for the necessary and accessory standard like Lane County. Therefore, whether the forest dwelling approved satisfies the "necessary" criterion must be decided on the facts of this case. Neither LCDC nor Douglas County have spelled out the details of what is required to meet the necessary test as Lane County attempted to do, unsuccessfully.[5]

Petitioner argues the Court of Appeals discussion of the necessary test in Lane County is binding on Douglas County, and it cannot apply the necessary standard in a way that contravenes the Court of Appeals' construction of that criterion.

In Lane County, the Court of Appeals first observed that neither LCDC nor Lane County had attempted to define "necessary". The court then stated

> "The dictionary definition is "that cannot be done without: that must be done or had: absolutely

required.' Webster's Third New International Dictionary 1511 (1976). That definition is compatible with LCDC's use of 'necessary' and with Goal 4's requirement that forest land be preserved for forest uses. Lane County's criteria would allow dwellings which can be done without, need not be had and are not absolutely required for a forest use; they therefore do not comply with the goal.

"Lane County * * * requires that there be a forest management plan 'which demonstrates [that] forest production will be enhanced by on-site forest management' from the dwelling. (emphasis supplied.) Many things can enhance production without being necessary to it. It may be more convenient for the owner of forest land to do required cultivation work from a nearby residence rather than commuting from a home some distance away, but that does not make it necessary to do so. Living on the land may help deter arsonists, and thereby enhance production, but that fact does not render a forest dwelling necessary. For a forest dwelling to be necessary and accessory to wood fiber production, it must, at the least, be difficult to manage the land for forest production without the dwelling. The purpose of the dwelling must be to make possible the production of trees which it would not otherwise be physically possible to produce. * * *" (footnotes omitted) (final emphasis supplied, other emphasis in original) Lane County, supra, 83 Or App at 282-283.

Petitioner and respondents base their arguments on the above emphasized concluding sentences. Petitioner emphasizes the second sentence; respondents emphasize the first sentence.

Petitioner argues the county has only shown the dwelling in this case will make forest management of the parcel more convenient. Petitioner says this falls short of the "necessary" standard as explained by the Court of Appeals.

Respondents focus instead on the first sentence and state "Obviously, if the controlling definition here is:

> 'the purpose of the dwelling must be to make possible the production of trees which it would

not otherwise be physically possible to produce',

neither the dwelling here at issue nor any other dwelling would ever be permitted in a forest zone, regardless of LCDC's position on the requirement in any comprehensive plans or ordinances with respect to the dwelling being necessary and accessory.

"Even an old fashioned logging camp bunkhouse, a forest ranger's house, a lookout, a dwelling for a camp boss, or any conceivably forest-related dwelling could not qualify under such a definition. No matter how difficult, uneconomical, wasteful, foolish, or ridiculous it may be, it is always 'physically possible to produce' trees without any conceivable dwelling. The court's previous sentence is 'for a forest dwelling to be necessary and accessory to wood fiber production, it must, at the least, be difficult to manage the land for forest production without the dwelling.' This, in substance, is exactly what the Board of Commissioners found [here]. * * *

"Participants submit that the 'at least difficult' statement of the court was intended to modify or interpret its 'not physically possible' statement. Otherwise why say it." Respondents' Brief 12-13.

Respondents then argue

"Given a reasonable interpretation of this requirement that there are numerous dwellings which would not qualify as necessary, i.e., a rental, a summer home, a hunting cabin, a dwelling on land wholly unsuitable for forest production, and a single family dwelling sought by owners solely to have a place to live in with no intention of increasing or furthering forest production of the land. The dwelling here sought is none of these." Respondents' Brief 14.

We agree with respondents that if we simply rely on the language cited by petitioner and require a demonstration of "physical imposibility" before a forest dwelling could be approved, we would make LCDC's policy to allow some forest dwellings a nullity. We do not believe LCDC or the Court of Appeals intended that result. However, respondents' recitation

of several examples of dwellings that obviously are not necessary is followed with a conclusion that the dwelling here is not like the recited examples. Respondents seem to imply, incorrectly, that the dwelling must therefore be one that is "necessary" for a forest use.

While it is possible to read the Court of Appeals' decision in its entirety to reject a literal "impossibility" standard for forest dwellings, it is also unmistakable that the Court of Appeals believes substantially more than convenience, enhancement, and cost efficiencies are required to show a dwelling is necessary for forest uses.

The necessary standard is admittedly imprecise. The Court of Appeals, however, made it very clear that it left open the door for LCDC to adopt a different meaning for "necessary" if the Court of Appeals construction did not reflect LCDC's view of the standard. Lane County, supra, 83 Or App at 283, note 5. Lane County, supra, 85 Or App at 622.[6] LCDC has not done so. We therefore review the county's explanation for why it believed the dwelling it approved is necessary for forest use, with the Court of Appeals construction of that standard in mind.

Petitioner argues the county simply showed it would be more convenient to live on the 150 acre site and there would be cost savings. Petitioner notes the record shows some forest regeneration has already occurred on portions of the property. The parties dispute how much thinning, brush removal, reseeding and other management practices will be required. Petitioner

claims the county made "no findings at all regarding specific costs, material or labor requirements of management practices essential to such production, * * *." Petitioner's Brief 19.

The county first found that Goal 4 and implementing county requirements should be interpreted to recognize smaller individual forest owners as well as large corporate and public forest land owners. The county found those smaller land owners have lesser fiscal resources than larger owners. Record 21-22. The county then concluded:

> "Living on the site itself has substantial advantages in both time and money. If the owner is required to live elsewhere:
>
> (a) The cost of that investment is not available as a capital resource to be used for the improvement of the forest land.
>
> (b) Equipment used on the site does not have the protection the owners continuous presence would provide.
>
> (c) There is a substantial transportation cost in money and time. * * *
>
> Merely because it is possible to do their forest management practices without living there does not negate such necessity. If that were the test, there never would be a single family dwelling 'necessary' for "development and management' of a parcel of land for forest production. This criteria [sic] was intended to have a reasonable application and interpretation considering the ownership, parcel size, and location." Record 22-23.

In their brief respondents argue

> "The participant-respondents submit it is correct to conclude that it would not be easy and, therefore, difficult and, therefore, necessary, both from a labor standpoint and financially for these two owners to effectively manage the subject forest property without being permitted to live on it." Respondents' Brief 21.

The respondents contend the record shows evidence of a need to clear and manage portions of the property not currently in forest production. Respondents argue there is evidence in the record to show the timber management they seek to apply is needed on the property.

The respondents then argue

> "If the participant-respondents had embarked upon the task of putting in best estimates of cost of doing all the work while living somewhere off the property and commuting as against while living on it, what number would be magic?"

We conclude the county failed to demonstrate the proposed dwelling complies with the necessary standard as that standard has been interpreted by the Court of Appeals. The county bases its decision on the undisputed and possibily indisputable fact that the permitted forest dwelling would, at least theoretically, make capital available that would otherwise be invested in land for housing elsewhere. Also, we do not question that equipment could be better protected and there would be time and transporation costs savings. The county does not, however, attempt to show the financial and practical magnitude of these factors in this case.

As we indicated earlier, there is no precise standard to guide the county. However, the lack of a precise standard does not mean the guidelines that have been provided by the Court of Appeals can be ignored. The court has made it clear that convenience and cost savings, alone, are not enough to make a

dwelling necessary. In this case, the evidence in the record suggests that clearing, thinning, planting and other management activity will not take extensive amounts of time and would not require a continuous presence on the property. Record 36-37.

Nearby properties apparently are being managed for forest purposes without an on-site residence. Assuming it is appropriate to consider the particular needs of smaller land owners or these specific land owners, the county failed to supply reasons or evidence to demonstrate that the property cannot reasonably be put to forest use without a dwelling on the site. The county asks that we accept theoretical but unquantified cost savings and convenience as a sufficient basis for concluding the dwelling is necessary. We cannot do so. We conclude the county failed to show the dwelling is necessary for forest use, and the first assignment of error therefore is sustained.

THE ACCESSORY STANDARD

Petitioner also argues the county improperly defined the "accessory" part of the "accessory and necessary" criterion. Petitioner argues that under accepted definitions of "accessory," an accessory use must be minimal and reasonably related to the primary use.[7]

Petitioner then cites Mola v. Reiley, 100 New Jersey Super 343, 241 A2d 861 (1968) and our decision in Matteo v. Polk County, 11 Or LUBA 259 (1984), for the proposition that the primary use must exist before an accessory use can be allowed.

In Mola the court concluded the primary use (a gas station) must be demonstrated before the accessory use (a gas tank and pump) could be authorized. In Matteo, supra, we concluded " * * * before a farm dwelling may be established on agricultural land, the farm use to which the dwelling relates must be existing." Matteo, supra at 263.

The county in its plan defines accessory as follows:

> "ACCESSORY USE: A use incidental, appropriate and subordinate of a main use of a lot or building." Douglas County Land Use and Development Ordinance, Sec. 1.090.

In its order the county stated the term differently

> "Webster defines accessory as 'something extra; a thing added to help in a secondary way.'
>
> "Living on the premises permits substantial flexibility and budgeting time to devote to forest management. The individual owner can effect substantial savings by doing all or substantially all of the forest management tasks himself on such a parcel as the subject land. Obviously, the economies in time, effort and money resulting from this type of program are enhanced by living on the site itself. For these reasons the single family dwelling here sought will certainly be accessory to the parcel's forest management." Record 22-23.

We do not believe the dictionary definition recited by the county differs materially from the definition in its land use ordinance. In addition to the findings quoted above, the county made additional findings regarding the proposed forest use of the property in other parts of the order. Some of those findings were quoted earlier in this opinion, and while we conclude they are insufficient to show the dwelling is necessary for forest use, we believe they are sufficient to

show the dwelling will be accessory.

We decline petitioner's invitation to impose the Matteo requirement that the primary forest use must precede approval of an accessory use in this case. The primary use apparently does exist on substantial portions of this property. We note the Matteo decision is based on specific statutes allowing "dwellings in conjunction with farm use." ORS 215.213(g); 215.283(f). In addition, ORS 215.203(2)(a) defines farm use to require the "current employment" of the land for farm use. The Matteo principal that the farm dwelling must follow the farm use in time therefore need not necessarily apply to all accessory uses. While it may be that a similar principal should be applied to some other accessory uses or accessory uses generally, we have no occassion to impose such a requirement in this case.

The accessory standard portion of the first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

In this assignment of error petitioner contends the county misconstrued applicable plan criteria and failed to demonstrate with findings supported by substantial evidence that the criteria were met.

COMPATIBILITY

Douglas County Land Use and Development Ordinance Sec. 3.39.050(1) requires

"the proposed use is or may be made compatible with

existing adjacent permitted uses and other uses permitted in the underlying zone."

Petitioner complains this compatibility criterion was not specifically addressed by the county. Petitioner says this failure, in view of substantial testimony by petitioner that the dwelling would not be compatible, requires remand. City of Wood Village v. Portland Metropolitan Local Government Boundary Commission, 48 Or App 78, 616 P2d 528 (1980); Westerburg v. Lane County, 7 Or LUBA 7 (1983).

Petitioner points out testimony in the record to show it has a history of conflicts between forest dwellings and its forest management operations such as chemical applications, slash burning and harvesting. Petitioner claims that while the county made some findings that address compatibility, those findings inadequately state the county's reasoning why this standard is met and inadequately address concerns regarding impacts on wildlife and land prices.

Citing La Pine Pumice Company v. Deschutes County, 13 Or LUBA 242, 248 (1985) respondents argue that compatibility requires only a capability of living together harmoniously and does not require that there be no impacts at all. See also, OAR 660-04-020(2)(d).

Respondents argue the county did specifically address Sections 3.2.100(1)(a) and 3.39.000.[8] Respondents contend the county adopted findings and required appropriate conditions to ensure the dwelling will be compatible, thereby satisfying

Section 3.39.050(1). The respondents particularly note that the applicant will be engaged in the same type of forest management activity as adjoining land owners, and there is no reason to assume arbitrarily there will be incompatibility. Respondents also point to the required timber management easement which is to prevent complaints regarding timber management activity on adjoining properties.

Finally, respondents dispute the relevance of petitioner's concerns regarding effects of the dwelling on wildlife and land prices. Respondents argue the possible problems with game damaging seedlings will occur with or without the dwelling. We understand respondents to argue the possible increase in land value does not mean Goal 4 is violated and does not render the dwelling incompatible in violation of Section 3.39.050(1).

In its order, the county cites and recognizes the applicability of Sections 3.2.100(3)(a); 3.39.000 and 3.39.050. Record 13-14. The county then sets forth the following findings:

> "While it must be recognized that any intrusion into a forest land area, which the subject land and surrounding lands for a considerable area are, by any residential use might become incompatible with neighboring forest uses, the control conditions which we can and will impose upon the permit for such dwelling will result in its not being so in this instance. If the plan and ordinance did not contemplate that a single family dwelling could be permitted in certain circumstances there would be no provisions to allow it. Further, the existence of this residence in this remote area can provide additional surveillance thereof to provide earlier warning of fire. The land parcel at 150 acres will provide ample physical buffer between the dwelling and

adjacent forest lands. The overall use of the subject parcel by applicants is described by their application and testimony submitted is in conformance with the policies of the plan." Record 15-16.

The pertinent conditions imposed by the county to achieve the above requirement included: 1) a forest management easement in which the applicant would waive their right to complain about forest operations on adjoining properties; 2) water storage for fire protection; 3) appropriate fire breaks acceptable to the Douglas County Fire Protection Agency. Record 27-28.

The required timber management easement may be effective to waive all rights the applicants and their successors may have to complain about forest operations on adjoining property. However, that does not have a significant bearing on the compatibility of adjoining forest uses and the residential use proposed. In addition, the county's observation that the property will be used for forest uses in the same way that adjoining properties are used misses the point. The compatibility issue has to do with the proposed dwelling, not the applicant's proposed forest use of the 150 acre parcel. See Publishers Paper Company v. Benton County, 6 Or LUBA 182, 187 (1982).

We agree with respondents that concerns raised by petitioner regarding possible inflation of land prices and the need for hazing permits to avoid game damage to seedlings have no bearing on the compatibility of the dwelling with adjoining

forest uses.[9]

The county did impose conditions that reasonably can be expected to reduce fire hazard. However, petitioner cites more than a generalized fear of conflicts between its customary forest operations (e.g., herbicide application) and the proposed forest dwelling. Record 34-35. It may be that restrictions imposed under the forest practices program carried out pursuant to ORS 527.610 et seq, setbacks, natural buffers and other factors would be adequate to assure compatibility with adjoining forest operations on privately owned lands and the National Forest, but we cannot reach that conclusion based on the county's findings. We note the county did not impose specific buffer or setback requirements to assure compatibility. Even though we give substantial weight to the county's determination on such general standards as compatibility, the determination must be accompanied by an explanation of the county's rationale. McNulty v. City of Lake Oswego, 14 Or LUBA 366 (1986). The county's findings fail to supply an adequate rationale. We therefore sustain this portion of the second assigment of error.

INTERFERENCE WITH FOREST PRACTICES

The county land use and development ordinance states in part:

"3. Single-family dwellings may be established, * * * , upon a finding that each proposed dwelling:

* * *

b. Does not interfere seriously with forest practices as regulated by ORS 527.610 to 527.730 on adjacent lands devoted to forest use; * * *."

Petitioner presents two arguments. First, petitioner contends the county's response to petitioner's concerns regarding fire risks are inadequate and not supported by substantial evidence. Second, petitioner contends the county's reliance on the forest management easement in response to concerns regarding herbicide application, dust, slash burning smoke, noise and other industrial forest operations is improper.

Respondents contend the county recognized that fires are always possible, and the county imposed appropriate precautions including requirements for fire breaks and on-site water storage and firefighting capability. As explained later in this opinion, we believe the county has imposed sufficient conditions to respond to petitioner's concerns regarding fire hazards from the dwelling.

Respondents argue, with regard to petitioner's second concern, the county is entitled to rely on the forest management easement to satisfy the requirement that the dwelling not seriously interfere with adjacent forest operations. Respondents explain that the criterion does not proscribe all interference--only serious interference.

Respondents are correct that the county's criterion apparently envisions that at least some interference with adjoining forest practices is acceptable. However, our review of the record shows the county relies almost entirely on the

forest management easement to determine there will be no serious interference.[10]

As petitioner correctly notes, the record does not disclose the terms of the forest management easement. The easement is to be executed in the future, and the county simply requires that it be "satisfactory to the Douglas County Planning Director." Record 27.

In Margulis v. City of Portland, 4 Or LUBA 89 (1981) we recognized that in appropriate circumstances particular development details may be deferred into the future as long as it is possible from the record to determine the project "can * * * reasonably be expected to meet applicable [standards] * * *" Id. at 98. Here the county is required by its own ordinance to conclude the dwelling will be compatible with adjoining forest uses. It may well be that the forest management easement in conjunction with other factors will result in no serious interference with adjoining forest practices. However, because the county relies almost entirely on the easement to satisfy this criterion, until the terms of the easement are known, neither the county nor this Board is in any position to conclude the easement will result in no serious interference to adjoining forest practices.

Even if we assume, as respondents argue, the forest management easement will bind the applicant and all successors not to sue adjoining property owners for damages that could result from forest operations, that, alone, is not sufficient

to comply with the no serious interference standard in the county's ordinance. Such easements do not eliminate interference. At best, they eliminate the dwelling owner's legal right to complain about forest operations which may impact the dwelling.

We do not mean to say that forest management easements may not be part of the county's measures to assure there is no serious interference. It may be in this case that sufficient buffering is possible or that limitations imposed on forest operators through the forest practices program or other regulatory programs are sufficient to assure no serious interference. However, the county must explain why, in this case, the easement it proposes in conjunction with other factors will allow normal forest operations that would otherwise occur on adjoining propeties without serious interference.

WATER SUPPLY AND FIREFIGHTING EQUIPMENT

Petitioner asserts the county violates Section 3.2.100(3)(g)(5) which provides

> "the homeowner shall maintain an adequate water supply and the appropriate firefighting equipment to contain fire from spreading to surrounding forest lands * * *"

Petitioner says the county does not explain why the proposed water supply is adequate as required by the above criterion.

The county imposed requirements to satisfy standards established by the Douglas County Forest Protection Agency.

Those conditions include a fire break to be cleared of dead material and a turnaround for fire equipment. The county required maintenance of a water supply and firefighting equipment. The county specifically required the water supply have 40 pounds of pressure per square inch and sufficient hose to reach the entire fire break area. The county adopted the following findings

> "The testimony of Noel Jackson and Paul Krume is that there is a good sized pond on the subject site which has standing water during all seasons. In addition, there are flowing streams which have water during all seasons. There is an ample supply of water from these sources to provide a substantial supplement to the domestic water system for firefighting. * * * The applicants have a D-6 caterpillar tractor with blade and winch and an HD-6 Allis Chalmers tractor with blade and winch, a two inch water pump capable of pumping 8,400 gallons per hour.
>
> We find that complying with the Douglas Forest Protection Associaton requirements for dwellings and forest lands as a condition for granting this permit should assure compliance with this provison of the ordinance." Record 25-26.

It is true we do not know the exact size of the pond or the capacity of the flowing streams. However, because the pond and streams are year-around rather than seasonal, and supplement the water available from the well, we believe the county has satisfied its obligation to find an adequate water supply.

The second assignment of error is sustained in part as described above.

The county's decision is remanded.

FOOTNOTES

1

The only proximate properties not in federal ownership are two five acre parcels adjoining applicants on the southwest and a 160 acre parcel adjoining applicants on the northwest. The 160 acre parcel is owned by petitioner. The adjoining privately owned parcels and the surrounding federal land are all zoned TR.

2

Forest uses are defined in Goal 4 as follows:

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

3

LCDC has also developed standards to allow nonforest uses on forest land. See e.g., Grden v. Umatilla County, 10 Or LUBA 37 (1984); Allen v. Umatilla County, 8 Or LUBA 89 (1983). Nonforest dwellings and the standards that apply to such dwellings are not at issue in this appeal.

4

The county's development code provided:

"A dwelling or mobile home, any accessory structures, on a vacant legal lot containing at least 10 acres shall be deemed accessory and necessary to the forest management of the legal lot provided:

"(i) A detailed forest management plan sufficient to obtain a tax deferral is submitted for the legal lot which demonstrates forest production will be enhanced by on-site forest management from the residence, and

"(ii) Based upon the above-referred forest management plan, the property has qualified for a tax deferral pursuant to state law, and

"(iii) The forest management plan shall specify how the following practices, when applicable, are to be addressed: road and fire trail contruction and maintenance, site

preparation, reforestation, stand conversion, planning of nonstocked openings, competition reduction/release, precommercial thinning, harvest scheduling/rotation and special site treatment for topography and other concerns.

"(iv) If the legal lot does not have a forest deferral pursuant to state law, then upon substantial completion of the details represented in the forest management * * * the dwelling or mobile home should be allowed on the property. Substantial completion of the details represented in the forest management plan shall be verified by qualified by a private forester and such verification shall be submitted in writing to the department. During the interim, while the forest management plan is being implemented on the subject legal lot, a temporary mobile home in conjunction with the forest use shall be allowed for a period not to exceed five years. If the forest management land is not implemented within the five year period, the temporary mobile home shall be removed."

---

[5] The Court of Appeals rejected LCDC's and Lane County's arguments that the criteria quoted at footnote 4, supra, should be viewed as an appropriate "definition" of necessary.

---

[6] We also note that the Court of Appeals refused to accept LCDC's arguments that a less demanding application of the "necessary" standard was warranted in Lane County because the county distinguished between primary and impacted forest areas and applied its forest dwelling criteria only in impacted forest zones, not the county's primary forest zone, where dwellings were prohibited. In this case the timber resources zone apparently is the county's primary forest zone, so even if a more permissive application of the necessary standard in impacted forest zones was appropriate, that principal would not apply here.

---

[7] Petitioner also argues

"Applicant's energies, money and intent must be focused overwhelmingly on the primary use." Petitioner's Brief 13.

We are cited no authority for this extreme requirement and decline to adopt it.

---

[8] Those sections provide in pertinent part:

"Single-family dwellings may be established * * * upon a finding that each proposed dwelling:

(a) is compatible with the forest use policies of the Douglas County Comprehensive Plan, thereby retaining forest lands for forest uses;" Section 3.2.100(3)(a).

"A conditional use is an activity which is basically similar to uses permitted in a particular zone but which may not be entirely compatible with those uses permitted outright. Therefore, a conditional use must be approved through the Administrative Action procedure to ensure that the use is made compatible with the permitted uses in the zone or other adjacent permitted uses which may be adversely affected. Conditions of approval may be imposed to insure that any use may be made compatible with adjacent permitted uses and that non-resource uses permitted in resource areas do not interfere with accepted resource management practices. * * *" Section 3.39.000.

---

[9] Inflation of land prices may, in a particular case, suggest that a dwelling is not really an accessory use. Inflation of land prices may also at some point violate the Goal 4 requirement that forest land be retained for forest uses. However, we are unable to conclude on this record that possible land price increases raise a compatibility issue.

---

[10] The county also noted that the Forest Service had granted the applicant an access easement for their home, and the Forest Service and other land owners had not objected to the dwelling on compatibility grounds.