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

DEPARTMENT OF LAND CONSERVATION )  
AND DEVELOPMENT, )  
Petitioner, )  
vs. )  
CURRY COUNTY, )  
Respondent, )  
and )  
SOUTH COAST LUMBER COMPANY, )  
Intervenor-Respondent. )

LUBA No. 93-087  
FINAL OPINION  
AND ORDER

Appeal from Curry County.

Celeste J. Doyle, Assistant Attorney General, Salem,  
filed the petition for review.

Michael G. Herbage, County Counsel, Gold Beach,  
represented respondent.

Frank H. Hilton, Jr., Portland, represented intervenor-  
respondent.

HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON,  
Referee, participated in the decision.

REMANDED 09/17/93

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

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision changing the  
4 comprehensive plan and zoning designations for a 153 acre  
5 parcel.

6 **MOTION TO INTERVENE**

7 South Coast Lumber Company moves to intervene on the  
8 side of respondent. There is no opposition to the motion,  
9 and it is allowed.<sup>1</sup>

10 **FACTS**

11 The subject property was formerly owned by the Oregon  
12 Department of Transportation and consists of 153 acres  
13 located on both sides of Carpenterville Road. Prior to the  
14 disputed decision, the property was designated "Public Area"  
15 by the comprehensive plan and zoned "Public Facilities."

16 Approximately three fourths of the property lies west  
17 of Carpenterville Road. The plan and zoning designations  
18 for this larger area are changed to Rural Residential and  
19 Rural Residential Ten (RR-10), respectively. The plan and  
20 zoning designations for the smaller area east of  
21 Carpenterville Road are changed to Forest Grazing and  
22 Forestry-Grazing (FG), respectively.

23 A map at Record 20 shows that with two relatively small  
24 exceptions, the subject property is surrounded by lands

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<sup>1</sup>Neither respondent nor intervenor-respondent filed a brief in response to the petition for review.

1 planned Forest Grazing and zoned FG. The exceptions are  
2 parcels planned and zoned for rural residential development  
3 which adjoin the subject property's northern boundary for a  
4 distance of approximately 1300 feet and a smaller area zoned  
5 for rural residential development which adjoins the  
6 southeast corner of the subject property for a few hundred  
7 feet. While the property is essentially surrounded by large  
8 parcels planned Forest Grazing and zoned FG, a relatively  
9 large area planned and zoned for rural residential use is  
10 located beyond those Forest Grazing parcels to the south and  
11 west.

12 Based on this proximity to rural residential planned  
13 and zoned areas, the county granted exceptions to Statewide  
14 Planning Goals 4 (Forest Land) and 3 (Agricultural Lands)  
15 for the larger, western portion of the subject property, on  
16 the basis that this area is irrevocably committed to  
17 nonresource use. As noted earlier, the county also  
18 approved Rural Residential and RR-10 plan and zone  
19 designations for this portion of the subject property.  
20 Petitioner challenges the county's action with regard to the  
21 larger western portion of the property.

22 **DECISION**

23 The standard that must be met to approve an irrevocably  
24 committed exception to allow rural residential development  
25 of lands subject to Goals 3 and 4 are set out in ORS  
26 197.732(1)(b), Goal 2, Part II(b) and OAR 660-04-028. The

1 statute, goal and rule all impose the same overriding legal  
2 standard, that "existing adjacent uses and other relevant  
3 factors make uses allowed by the applicable goal  
4 impracticable \* \* \*."

5 Petitioner contends that while the county's findings  
6 address several of the relevant factors set out in  
7 OAR 660-04-028, the findings fail to demonstrate that those  
8 factors make resource use of the subject property  
9 impracticable.

10 **A. Proximity of Adjoining Rural Residential**  
11 **Development**

12 Petitioner first challenges the county's findings that  
13 the subject property is "surrounded on three sides by rural  
14 residential development."<sup>2</sup> According to petitioner the  
15 subject property is actually surrounded by property planned  
16 and zoned for rural resource use, with the two exceptions  
17 noted earlier. While additional rural residential  
18 development is present to the north, west and south, in most  
19 cases that development is buffered from the subject property  
20 by approximately 1/4 mile of land planned and zoned for  
21 resource uses. As petitioner correctly notes, contiguity of  
22 resource lands with rural residential development is not  
23 sufficient, in and of itself, to establish irrevocable  
24 commitment of such resource land. 1000 Friends of Oregon v.

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<sup>2</sup>Under OAR 660-04-028(6), "parcel size and ownership patterns of the exception area and adjacent lands" are relevant factors.

1 Douglas Cty, 4 Or LUBA 24, 34 (1981). Such is particularly  
2 the case where, as here, a relatively small portion of a  
3 relatively large resource parcel adjoins such rural  
4 residential development.

5 Petitioner also contends that in finding the nearby  
6 rural residential development irrevocably commits the  
7 subject property to nonresource use, the county relied on a  
8 letter from the applicant's employee. In that letter, the  
9 employee takes the position that normal forest management  
10 practices, if properly conducted, need not adversely impact  
11 adjoining residential use. However, the letter goes on to  
12 contend that many persons perceive that forest practices may  
13 conflict with rural residential uses on adjoining lands and  
14 recounts an example of numerous complaints being filed as a  
15 result of smoke impacts from a slash burn.

16 Such evidence is insufficient to constitute substantial  
17 evidence that the subject property is irrevocably committed  
18 to nonresource use by the relatively small number of  
19 adjoining rural residential parcels and the other rural  
20 residential parcels separated from the subject property by  
21 other resource parcels. Neither do general studies cited in  
22 the findings concerning conflicts between rural residential  
23 uses and forest uses provide substantial evidence that the  
24 subject property is irrevocably committed to nonresource  
25 use. As petitioner points out, the county's findings fail  
26 to establish how such conflicts operate in this case to

1 render the subject property irrevocably committed. See  
2 Prentice v. LCDC, 71 Or App 394, 404, 692 P2d 642 (1984).  
3 Petitioner contends, and we agree, that such studies are not  
4 sufficient to establish that all forest lands in close  
5 proximity to rural residential uses are irrevocably  
6 committed to nonresource use.

7 **B. Division of the Subject Property by Carpenterville**  
8 **Road**

9 As noted earlier, the subject property is divided by  
10 Carpenterville Road. Although OAR 660-04-028(6)(e)  
11 specifies that man-made features such as roads may  
12 constitute impediments to resource use, petitioner contends  
13 the county's findings do not explain why such is the case  
14 here. Without such an explanation, petitioner contends the  
15 presence of Carpenterville Road provides no basis for  
16 concluding the property is irrevocably committed to  
17 nonresource uses.

18 We agree with petitioner.

19 **C. Steep Slopes**

20 Petitioner contends the county's finding that the  
21 subject property is composed of steep slopes is not  
22 supported by substantial evidence. Petitioner argues the  
23 record shows the property is moderately to steeply sloped  
24 and includes level areas. The county makes no attempt to  
25 explain why the subject property's slopes render forest use  
26 impractical and therefore irrevocably commit the subject  
27 property to rural residential use.

1           **D. Failure to Consider Forest Uses other than**  
2           **Commercial Forestry**

3           Petitioner contends that in approving the challenged  
4 exceptions, the county limited its consideration to the  
5 suitability of the subject property for commercial forestry.  
6 Even if the county could establish that commercial forestry  
7 is rendered impracticable, petitioner contends the county  
8 must also show other uses allowable under Goals 3 and 4 are  
9 impracticable. DLCD v. Klamath County, 16 Or LUBA 23, 28  
10 (1987); DLCD v. Columbia County, 15 Or LUBA 302, 304 (1987).  
11 Petitioner argues the county's findings fail to establish  
12 such other uses are impracticable.

13           Petitioner is correct.

14           The county's decision is remanded.