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

DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
Petitioner,)
vs.)
CROOK COUNTY,)
Respondent,)
and)
WESTERN RANCH PROPERTIES, INC.,)
Intervenor-Respondent.)

LUBA No. 93-125
FINAL OPINION
AND ORDER

Appeal from Crook County.

Celeste J. Doyle, Assistant Attorney General, Salem, filed the petition for review and argued on behalf of petitioner.

No appearance by respondent.

Robert S. Lovlien, Bend, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Holmes Hurley Bryant Lovlien & Lynch.

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

REMANDED 02/04/94

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 county decision granting
4 subdivision and planned unit development (PUD) preliminary
5 development plan approval for a portion of a ranch located
6 in the county's Exclusive Farm Use (EFU-3) zone.

7 **MOTION TO INTERVENE**

8 Western Ranch Properties, Inc., the applicant below,
9 moves to intervene on the side of respondent. There is no
10 opposition to the motion, and it is allowed.

11 **FACTS**

12 In DLCD v. Crook County, 25 Or LUBA 98 (1993)
13 (Stage Coach I), we remanded a prior county decision
14 granting subdivision and PUD preliminary development plan
15 approvals for the subject property.¹ We restate below the
16 relevant facts, as set out in that opinion:

17 "Prior to amendments adopted by the county in
18 March 1991, the Crook County Zoning Ordinance
19 (CCZO) allowed PUDs as a conditional use in the
20 EFU zone. In February 1991, just before the March
21 1991 amendments were adopted, intervenor submitted
22 an application for subdivision and PUD approval.
23 Thereafter, the county planning commission granted
24 outline development plan (ODP) approval on May 9,
25 1991. One of the conditions of the May 9, 1991
26 ODP approval is that a statewide planning goal
27 exception be justified for the portion of the
28 property to be developed residentially. Following
29 a public hearing on March 25, 1992, the county

¹Like the parties, we refer to the disputed PUD as the Stage Coach Ranch PUD.

1 planning commission granted [preliminary
2 development plan] approval on April 24, 1992.
3 That decision was appealed to the county court,
4 which affirmed the planning commission decision on
5 June 23, 1992.

6 "Other material facts are stated in the petition
7 for review as follows:

8 "The subject property, part of the
9 historic Red Cloud Ranch, consists of
10 1,200 acres of EFU land with an existing
11 ranch house and barn. The property is
12 taxed under the preferential farm use
13 assessment program. Presently, the
14 property is not irrigated and has no
15 water rights. There are two springs
16 (with ponds) on the property, however,
17 and evidence in the record indicates
18 ground water is available.

19 "The property contains soils of [U.S.
20 Soil Conservation Service] classes II-
21 VII. Historically, the property has
22 been used for grazing cattle and dry
23 land farming, and it is presently leased
24 for grazing. * * *

25 "To the west of the subject property
26 are residential developments and small
27 vacant parcels. Lands to the east of
28 the subject property are used for
29 grazing. The Central Oregon
30 Experimental Station and other irrigated
31 crop lands lie to the north of the
32 subject property across Highway 126.

33 "Under the county-approved subdivision
34 and [PUD], part of the property would be
35 divided into 120 lots with an average
36 lot size of one acre. The PUD is
37 intended to be a 'vacation home
38 development with a western theme.' The
39 ranch house, barn and remaining 1,080
40 acres will be used for employee housing,
41 corrals, subsurface sewage disposal
42 system drainfields, a community center,

1 and to 'run small numbers of cattle in
2 order to enhance the western ranch
3 theme.'

4 "'The proposed PUD lots would be served
5 by a public water system operated by a
6 privately owned water company that
7 serves a nearby residential area.
8 Sewage service will be provided by
9 individual septic systems or an off-site
10 subsurface sewage disposal system.
11 These systems will be maintained and
12 operated by the PUD's home owners
13 association. Garbage service and fire
14 protection would also be provided by the
15 homeowners association.'" (Footnotes
16 and citations omitted.) Stage Coach I,
17 25 Or LUBA at 100-02.

18 **FIRST ASSIGNMENT OF ERROR**

19 In our decision in Stage Coach I, we concluded that the
20 findings adopted to demonstrate compliance with a number of
21 the approval standards were inadequate. On remand, the
22 county readopted those findings and adopted additional
23 findings in support of its decision. Under the second and
24 third assignments of error, petitioner challenges the
25 adequacy of those findings. However, in its decision on
26 remand, the county also adopted an alternative basis for its
27 decision granting approval of the Stage Coach Ranch PUD. On
28 remand, for the first time in this proceeding, the county
29 took the position that under its land use regulatory scheme,
30 findings of compliance with certain approval standards are
31 required at the earlier ODP stage, not at the preliminary

1 development plan stage.² Based on this conclusion, the
2 county found it was not required to adopt findings
3 demonstrating compliance with those approval standards in
4 granting preliminary development plan approval.

5 Petitioner contends the county may not construe the
6 CCZO as requiring findings of compliance with the disputed
7 approval standards in the decision challenged in Stage Coach
8 I, and then, on remand, adopt an inconsistent construction
9 of the CCZO. In other words, petitioner contends the
10 interpretive question of whether those standards apply to
11 approval of the subject preliminary development plan is an
12 old issue that was settled in Stage Coach I. See Beck v.
13 City of Tillamook, 313 Or 148, 831 P2d 674 (1992); Citizens
14 for Responsible Growth v. City of Seaside, ___ Or LUBA ___
15 (LUBA No. 93-163, January 31, 1994), slip op 4.

16 Respondent has not appeared in this proceeding, and
17 intervenor-respondent concedes the first assignment of
18 error. We therefore turn to petitioner's challenges to the
19 adequacy of the findings adopted by the county on remand to
20 demonstrate compliance with the relevant approval standards.

21 The first assignment of error is sustained.

²In DLCD v. Crook County, 25 Or LUBA 625, aff'd 124 Or App 8 (1993), we affirmed a county decision interpreting the CCZO as requiring that the disputed approval standards be applied at the ODP stage of PUD approval and not requiring that those standards be addressed at the subsequent preliminary development plan stage.

1 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

2 Crook County Land Development Ordinance (CCLDO)
3 6.160(1) provides that PUDs must be consistent with the
4 comprehensive plan and the CCZO. Under CCZO 3.030(2)(P),
5 the standards of CCZO 3.030(4)(A) apply to PUDs in the EFU-3
6 zone.³ Petitioner contends the county's findings are
7 inadequate to demonstrate compliance with CCZO 3.030(4)(A).⁴
8 Petitioner also argues the county's findings are inadequate
9 to demonstrate compliance with comprehensive plan policies

³The standards of CCZO 3.030(4)(A), set out in full infra at n 4, are substantially identical to those imposed by former ORS 215.283(3) for approval of nonfarm dwellings in EFU zones. The EFU zoning statutes were substantially amended in 1993. However, former ORS 215.283(3) applies to the disputed preliminary development plan approval. ORS 215.428(3).

⁴CCZO 3.030(4)(A) provides as follows:

"Non-farm residential uses and land divisions * * * may be established on generally non-productive agricultural lands upon a finding by the Commission that each such use:

- "(a) Is compatible with farm uses and is consistent with the intent and purposes set forth in ORS 215.243, the County's Comprehensive Plan, this Ordinance, and more specifically this Section.
- "(b) Does not significantly interfere with accepted farming practices on adjacent agricultural lands.
- "(c) Does not materially alter the stability of the overall land use pattern of the area.
- "(d) Is situated upon generally unsuitable land for the production of farm crops and livestock considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of tract, historical cropping patterns, availability of water for irrigation, and is not definable in this section as agricultural land.

"* * * * *"

1 adopted to implement Statewide Planning Goals 11 (Public
2 Facilities and Services) and 14 (Urbanization). We address
3 petitioner's challenges separately below:

4 **A. Compatibility with Farm Uses (CCZO 3.030(4)(A)(a))**

5 CCZO 3.030(4)(A)(a) requires that the county show the
6 proposed Stage Coach Ranch PUD will be "compatible with farm
7 uses and * * * consistent with the intent and purposes set
8 forth in ORS 215.243, the County's Comprehensive Plan, [and
9 the CCZO]." In its decision on remand, the county court
10 explained that it relies on the following conclusion adopted
11 in the planning commission's May 9, 1991 decision in this
12 matter to establish that the Stage Coach Ranch PUD complies
13 with CCZO 3.030(4)(A)(a):

14 "The majority of the [Planning] Commission
15 concluded that the proposal is in accordance with
16 the agricultural policies set forth on pages 47-49
17 of the Crook County-Prineville Area Comprehensive
18 Plan. The Plan (page 48) states that the County
19 may permit subdivisions in rural areas on non-
20 productive agricultural lands. It is the
21 judgement [sic] of the [Planning] Commission that
22 the property meets this criterion due to the
23 relatively poor soil quality, lack of irrigation
24 water, and a history of relatively low
25 agricultural productivity. The Plan (page 48)
26 also states that development based on the [PUD]
27 concept are [sic] preferable to 'standard'
28 subdivision designs. The proposed development
29 meets this criteria [sic]. The [Planning
30 Commission] determined that the land was generally
31 non-productive because it did not meet the
32 agricultural land criteria as set forth in [CCZO]
33 3.030(8). The commission further concluded the
34 'need' issue raised in the Plan was met, as the
35 County from an economic development standpoint
36 encourages tourist and recreation as part of the

1 adopted Regional Strategy of Central Oregon."
2 Supplemental Record 9-10.⁵

3 In addition, the county court also cites a number of
4 planning commission findings which it believes establish
5 compliance with CCZO 3.030(4)(A)(a). Those findings are set
6 out below:

7 * * * * *

8 "(3) The property measures approximately 1,200
9 acres.

10 "(4) The property consists of a portion of the
11 former Red Cloud Ranch property. The
12 applicant is seeking conceptual approval for
13 the subdivision at this time.

14 "(5) The property is leased out for temporary
15 grazing of cattle. The original ranch house
16 and barn are located on the southeast part
17 of the property.

18 "(6) The property is not presently irrigated and
19 has no water rights.

20 "(7) Soils on the property consist of * * * SCS
21 Classes II-VII * * *. The * * * Soil
22 Conservation Service has indicated that
23 erosion could be a problem on steeper slopes
24 on the property, and erosion controls should
25 be employed on trails in those areas.

26 "(8) The property is presently under farm
27 deferral. The portion of the property to be
28 developed for residential and related uses
29 will be required to be removed from farm
30 deferral. The applicant plans to continue

⁵Citations in this opinion to "Record" and "Supplemental Record" are to the local government record submitted in Stage Coach I, which is included in the record submitted in this appeal. The local government record on remand is cited as "Record II."

1 to use the remainder of the property for
2 grazing. * * *

3 * * * * *

4 "(10) Lands to the west and north of the property
5 are occupied by residential development, and
6 by vacant small parcels in different
7 ownership. The Steelhammer, Sinclair-Davis
8 Tract and Red Cloud Ranch subdivisions are
9 included in this area, as is some non-
10 subdivision residential development. Lands
11 to the east consist of rangeland for
12 grazing. North across Highway 126 is the
13 Central Oregon Experimental Station and
14 irrigated cropland. Lands to the south are
15 vacant and Powell Buttes themselves are
16 located to the south of the property and
17 consist of steep slopes and rugged
18 topography. Most of the land is under BLM
19 control.

20 * * * * *

21 "(18) The property is not presently irrigated and
22 has no water rights. The Commission
23 received testimony that dryland farming was
24 attempted in the past on portions of the
25 property. Nothing has been tried for the
26 past 13-14 years.

27 "(19) The Oregon Department of Fish and Wildlife
28 indicate [sic] that there are no sensitive
29 species on the property. The property is
30 adjacent to deer winter range, with summer
31 range to the north, and is sometimes
32 frequented by antelope. There is
33 significant movement of deer in the area in
34 the fall. * * *" Supplemental Record 3-6.

35 There is obvious overlap between the compatibility
36 requirement of CCZO 3.030(4)(A)(a), the noninterference
37 requirement of CCZO 3.030(4)(A)(b) and the stability of the
38 overall land use pattern standard in CCZO 3.030(4)(A)(c).

1 See n 4, supra. The county findings addressing
2 CCZO 3.030(4)(A)(b) and (c) are discussed below. However,
3 even if a proposed use does not "significantly interfere
4 with accepted farming practices on adjacent agricultural
5 lands" or "materially alter the stability of the overall
6 land use pattern of the area," it may nevertheless be
7 incompatible with farm uses and inconsistent with the intent
8 and purposes set forth in ORS 215.243,⁶ and thus
9 inconsistent with CCZO 3.030(4)(A)(a).

⁶ORS 215.243 provides as follows:

"The Legislative Assembly finds and declares as follows:

- "(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic, and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.
- "(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 nation.
- "(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in cost of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the 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."

1 We do not minimize the difficulty of adopting findings
2 demonstrating that a 120 unit residential PUD will be
3 compatible with farm uses on the subject property and on
4 nearby properties and consistent with the purposes set forth
5 in ORS 215.243.⁷ The above findings are not sufficient to
6 address these questions. Many of the findings of fact and
7 conclusions are irrelevant or only marginally relevant to
8 those questions.⁸ The findings do not provide the required
9 explanation of why the proposed PUD will be compatible with
10 farm uses or consistent with the intent and purposes of ORS
11 215.243.

12 This subassignment of error is sustained.

13 **B. Significant Interference With Accepted Farming**
14 **Practices (CCZO 3.030(4)(A)(b))**

15 CCZO 3.030(4)(A)(b) requires that the county
16 demonstrate the Stage Coach Ranch PUD will not "not
17 significantly interfere with accepted farming practices on
18 adjacent agricultural lands." As it did in Stage Coach I,

⁷We note that ORS 215.243(3), quoted supra at n 6, seems particularly relevant and is not specifically addressed in the findings. There is discussion in the conclusion quoted above in the text that the land is of poor quality for agricultural purposes and the comprehensive plan envisions subdivisions on such land, with PUDs preferred over conventional subdivisions. However, this discussion is insufficient to demonstrate that this 120 unit PUD is consistent with ORS 215.243(3).

⁸As petitioner correctly notes, much of the conclusion and many of the findings quoted above in the text are more relevant to the standards set out in subsequent subsections of CCZO 3.030(4)(A).

1 the county adopts the following conclusion that CCZO
2 3.030(4)(A)(b) is satisfied:

3 "The PUD concept with the vacation homesites is
4 buffered from the adjacent farm practices by the
5 area of the ranch to be left for cattle grazing as
6 well as open space. The irrigated cropland to the
7 north of Highway 126 will be located one (1) mile
8 to the north of the homesites." Supplemental
9 Record 10.

10 The challenged decision also cites planning commission
11 findings Nos. 10, 18 and 19, quoted supra under
12 subassignment of error A. In addition, the decision cites
13 the following planning commission findings:

14 * * * * *

15 "(2) The applicant is requesting outline
16 development approval to establish a 120
17 parcel [PUD] in an Exclusive Farm Use, EFU-3
18 Zone. The density equivalency is one unit
19 per ten acres.

20 * * * * *

21 "(11) The property is adjacent to Highway 126 on
22 the north, Steffey Lane and Stillman Road on
23 the west, and Riggs Road on the northwest.
24 There is an existing access road on the
25 property connecting to Steffey Lane. The
26 applicant proposes to construct a new access
27 road connecting to Highway 126, to the east
28 of the existing access road. An access
29 permit from the State Highway Department
30 will be required.

31 "Approximately three and a half (3 1/2)
32 miles of roads will be constructed on the
33 property, connecting the housing areas in
34 the central and eastern part of the property
35 with the entrance road. Access to
36 residential parcels will be by looping
37 roads, with no cul-de-sacs.

1 "* * * * *

2 "(22) * * * * *

3 "The applicant proposes to construct a 120
4 home [PUD] consisting of small homes ranging
5 from 900 to 1900 square feet. A 5000 square
6 foot community center is also to be
7 constructed * * *. The existing barn on the
8 property is to be renovated and used for
9 agricultural purposes. It will not be used
10 for community functions. There will be no
11 swimming pools. There is to be perimeter
12 fencing, but no interior fencing. There
13 will be boarding facilities for riding
14 horses owned by residents and/or provided
15 for resident's [sic] use by the homeowner's
16 association. A system of horse and foot
17 trails will be constructed. The portion of
18 the property not used for residential and
19 related purposes is to be kept in use for
20 commercial cattle grazing. A full time
21 director will be employed at the community
22 center, with other paid employees involved
23 in groundkeeping and maintenance, and in the
24 cattle grazing operation.

25 "* * * * *

26 "The applicant plans to sell the units as
27 vacation homes, targeted to buyers who will
28 be in residence for not more than four to
29 six weeks at a time. * * * If full-time
30 residents are allowed, the issue of impact
31 on schools and other services should be
32 addressed. * * * Timeshare arrangements are
33 not to be marketed at this time, but may be
34 considered in the future." Supplemental
35 Record 3-8.

36 As petitioner correctly notes, a major shortcoming in
37 the above quoted findings is the apparent assumption that
38 potential interference with accepted farming practices
39 associated with the livestock grazing operation to be

1 conducted on the remainder of the 1200 acre property need
2 not be considered. The county appears to be relying on the
3 livestock operation to provide a buffer from other
4 "adjacent" agricultural lands.

5 The findings suggest the county may be relying on its
6 interpretive discretion under Clark v. Jackson County, 313
7 Or 508, 836 P2d 710 (1992), to construe CCZO 3.030(4)(A)(b)
8 as not requiring consideration of potential interference of
9 the Stage Coach Ranch PUD with accepted farming practices
10 associated with the livestock operation that will continue
11 on the portion of the subject property that will not be
12 developed residentially. If so, such reliance is misplaced.
13 Interpreting and applying CCZO 3.030(4)(A)(b) in that manner
14 would be inconsistent with our interpretation of former ORS
15 215.283(3)(b), which applies directly to the challenged
16 decision and is substantially identical to
17 CCZO 3.030(4)(A)(b).⁹ See Kenagy v. Benton County, 115 Or
18 App 131, 135-36, 838 P2d 1076, rev den 315 Or 271 (1992).
19 In addition, the county may not interpret
20 CCZO 3.030(4)(A)(b) in a manner that is inconsistent with
21 the statute it implements. ORS 197.829(4); Testa v.

⁹As noted earlier, the EFU zoning statutes were substantially amended in 1993. Former ORS 215.283(3)(b) applies to the decision challenged in this proceeding and requires that nonfarm dwelling units "not interfere seriously with accepted farming practices * * * on adjacent lands devoted to farm use * * * [.]"

1 Clackamas County, ___ Or LUBA ___ (LUBA No. 93-098, January
2 4, 1994), slip op 12.

3 Both former ORS 215.283(3)(b) and CCZO 3.030(4)(A)(b)
4 require that certain nonfarm uses not interfere seriously
5 with accepted farming practices on adjacent lands. From the
6 standpoint of the policy underlying the EFU zoning statutes,
7 the farming practices that will continue on the subject
8 property are just as much the subject of protection under
9 the statute as the farming practices on parcels that adjoin
10 the subject property. Under ORS 215.283(3)(b) and
11 CCZO 3.030(4)(A)(b), the county must demonstrate that there
12 will not be significant interference with accepted farming
13 practices on agricultural lands within the subject 1200 acre
14 subject property that are adjacent to the proposed PUD. The
15 above findings do not demonstrate that such is the case.

16 The findings must identify accepted farming practices
17 on adjacent agricultural lands, including the portion of the
18 1200 acres to remain in grazing use, and explain why the 120
19 unit PUD, as proposed, will not result in significant
20 interference with those farming practices.

21 This subassignment of error is sustained.

22 **C. Stability of the Overall Land Use Pattern of the**
23 **Area (CCZO 3.030(4)(A)(c))**

24 CCZO 3.030(4)(A)(c) requires that the proposed Stage
25 Coach Ranch PUD "not materially alter the stability of the
26 overall land use pattern of the area." The county relies in
27 part on the following conclusion adopted by the planning

1 commission in support of its determination that
2 CCZO 3.030(4)(A)(c) is satisfied.

3 "The land use pattern to the west and north is
4 residential in character with five (5) acre
5 density. The overall density of this project is a
6 10 acre density. The access to the property will
7 be limited to Highway 126 and will not create an
8 impact to Stillman or Riggs Road." Supplemental
9 Record 10-11.

10 In Stage Coach I, supra, 25 Or LUBA at 108, we stated
11 that although the above conclusion identifies some facts
12 that with other facts might "provide a basis for an
13 explanation of why the proposed PUD satisfies
14 CCZO 3.030(4)(A)(c)," the conclusion is inadequate to
15 demonstrate compliance with CCZO 3.030(4)(A)(c). On remand
16 the county again adopted the above conclusion and, in
17 addition, specifically identified findings that intervenor
18 contends support the above quoted conclusion.

19 The findings identified by the county include planning
20 commission findings 3 and 10 (quoted supra under
21 subassignment of error A), 11 and 22 (quoted supra under
22 subassignment of error B) and 1, 13, 17 and 21. Planning
23 commission findings 1, 13, 17 and 21 are as follows:

24 "(1) [The subject property] is located on the
25 south side of Highway 126, on the east side
26 of Stillman Road and south and east of Riggs
27 Road * * *.

28 "* * * * *

29 "(13) Electricity and telephone service are
30 available to the property.

1 "* * * * *

2 "(17) [A l]etter was received from the Department
3 of Land Conservation and Development with
4 two (2) principle comments; (1) The housing
5 area to be approved for an exception to be
6 placed in a rural residential zone, and (2)
7 Access to the PUD to be off existing
8 Stillman Road rather than off Highway 126 to
9 preserve the possibility of future
10 agricultural use on the level ground.

11 "* * * * *

12 "(21) The property is located in an area of the
13 county outside the Prineville Urban Growth
14 Boundary, which is designated for
15 agricultural use by the Crook County-
16 Prineville Area Comprehensive Plan. Page 48
17 of the Plan sets forth policies for the
18 preservation of agricultural lands and the
19 protection of agriculture in such areas.

20 "* * * * *" Supplemental Record 3-7.

21 In Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989),
22 we explained the analysis required to demonstrate compliance
23 with local code provisions, such as CCZO 3.030(4)(A)(c),
24 which implement the requirement of former ORS
25 215.283(3)(c).¹⁰ The county court explicitly noted the
26 required analysis in its findings.

27 "The [county court] is also aware of the Decision
28 in Sweeten v. Clackamas County * * * which sets
29 forth a three-step inquiry in determining whether
30 a non-farm use would materially alter the overall
31 land use pattern of the area. The [county court]

¹⁰Former ORS 215.283(3)(c) requires that nonfarm dwellings "not materially alter the stability of the overall land use pattern in the area[.]"

1 finds that this three-step process has been
2 satisfied. First, the County did select an
3 appropriate area for consideration. (See Finding
4 No. 10). Second, the County must examine the
5 types of uses existing in the selected area.
6 Again see Finding No. 10, 11, 19, 21 and 22.
7 Finally, the County must determine that the
8 proposed non-farm use will not materially alter
9 the stability of the existing uses in the selected
10 area. The [county court] finds that for the
11 reasons set forth above and those referenced from
12 the prior Planing Commission Decision of May 9[,]
13 1991 that the proposed Planned Unit Development
14 would not materially alter the stability of the
15 existing uses in the selected area. The property
16 is a Planned Unit Development which is favored
17 over a subdivision of the property. The uses to
18 the west and north are already occupied by
19 residential development. The lands to the east
20 which are range lands will not be impacted based
21 upon the fact that this is a Planned Unit
22 Development. The lands to the north across
23 Highway 126 are almost one mile to [sic] this
24 proposed development, and likewise will not be
25 adversely impacted." Record II 21-22.

26 Petitioner challenges the adequacy of the above
27 findings to satisfy each of the three steps required under
28 our decision in Sweeten. We agree with petitioner that
29 finding 10 (quoted supra under subassignment of error A) is
30 inadequate to designate the relevant area considered (step
31 1). Finding 10 simply identifies some of the uses located
32 near the subject property. The county findings come closer
33 to the mark with regard to identifying the types of uses
34 located in the relevant area (step 2). However, the
35 findings clearly are not adequate to explain why introducing
36 a 120 lot residential PUD into this area will not materially

1 alter the stability of the overall land use pattern of the
2 area (step 3).

3 Findings 1, 3, 11, 13, 17 and 22 identify some of the
4 physical features and characteristics of the subject
5 property and nearby properties, and discuss the improvements
6 planned for the subject property. Finding 10 identifies
7 farm and nonfarm uses in the area. Finding 21 cites and
8 discusses a plan policy to preserve agricultural land in
9 this area. What does not emerge from these findings, and
10 what is required under Sweeten, is a clear picture of the
11 existing land use pattern, the stability of that existing
12 land use pattern, and an explanation for why introducing a
13 120 lot residential PUD into this area will not materially
14 alter that stability.

15 While relatively little additional effort would be
16 required to clarify the location of the relevant area and
17 the types of uses included within that area, the findings
18 simply do not squarely address the task of describing how
19 those uses fit together to establish an existing land use
20 pattern.¹¹ Neither do they address the stability (or lack

¹¹For example, finding 10 states there are three subdivisions and other residential development in the area. Finding 10 does not discuss whether these residential uses are a significant or insignificant part of the overall land use pattern of the area. Whereas introducing a 120 lot PUD into a rural area that is already significantly developed with rural residential subdivisions may have little impact on the stability of the overall land use pattern, a more significant impact on the stability of the overall land use pattern may result where such a PUD is introduced into an area where there is only limited and scattered residential development.

1 of stability) of that existing overall land use pattern or
2 explain how a 120 lot residential PUD can be introduced into
3 the existing overall land use pattern of this rural area
4 without materially altering its stability. Our cases
5 establish that just as introducing residential development
6 into a rural agricultural area where such residential uses
7 do not already exist may violate the stability standard, the
8 stability standard may also be violated where there is
9 existing residential development and introduction of more
10 such development will make it more difficult to continue
11 existing agricultural uses. See McKay Creek Valley Assoc.
12 v. Washington County, 25 Or LUBA 238, 250-51, rev'd on other
13 grounds 122 Or App 28 (1993); Jonas v. Clackamas County, 22
14 Or LUBA 525, 529 (1992); McCoy v. Marion County, 16 Or LUBA
15 284, 292 (1987); Endresen v. Marion County, 15 Or LUBA 60,
16 66 (1986); Grden v. Umatilla County, 10 Or LUBA 37, 46-47
17 (1984).

18 This subassignment of error is sustained.

19 **D. Generally Unsuitable Land (CCZO 3.030(4)(A)(d))**

20 CCZO 3.030(4)(A)(d) requires that the proposed PUD be
21 "situated upon generally unsuitable land for the production
22 of farm crops and livestock considering [certain listed
23 factors]."

24 In Stage Coach I, we concluded the following finding
25 was inadequate to establish compliance with CCZO
26 3.030(4)(A)(d):

1 "The subject parcel is relatively non-productive
2 land. There are no water rights attached to the
3 land, and insufficient natural forage exists to
4 support livestock without supplemental feed.

5 "[CCZO] 3.030(8) establishes the criteria for
6 defining agricultural land. A parcel is
7 determined to be agricultural if five (5) criteria
8 are met. Through testimony, only four (4)
9 criteria are met, and, therefore, [the subject
10 property] is not considered to be productive
11 agricultural land."¹² Supplemental Record 11.

12 The county readopted the above finding in support of the
13 challenged decision and, in addition, adopted the following:

14 "LUBA was concerned that there was testimony that
15 the property had two active springs and was
16 currently leased for grazing.

17 "The [county court] readopts * * * findings of
18 fact 5, 6 and 7 and further readopts Finding No. 1
19 of its June 25, 1992 Decision.^[13]

20 "The property is used not for grazing lands, but
21 rather as simply a holding area for cattle or
22 other livestock which are fed with supplemental
23 feed. Except as a temporary holding facility, the
24 property has not been in any type of agricultural
25 production for at least 15 years. Without a water
26 right, the property cannot be put to any
27 productive agricultural use, either * * * for
28 grazing purposes or for the production of
29 agricultural crops. The springs are not adequate
30 for any additional agricultural production and the
31 water right is not for agricultural purposes. In

¹²We are uncertain of the legal significance, if any, of the last three sentences. There does not appear to be any dispute that the subject property is zoned for exclusive farm use and is designated for agricultural use in the comprehensive plan.

¹³Findings of fact 5, 6 and 7 are quoted in the text supra, under subassignment of error A. We are unable to locate a June 25, 1992 decision in the record, or any findings of fact in support of such a decision.

1 other words, the only agricultural use to which
2 this property could be put would be as a feed
3 lot." Record II 23-24.

4 As petitioner notes, the primary problem with the above
5 findings is that they conflict with other findings adopted
6 by the county which explain the property in fact has been,
7 currently is and will continue to be used for grazing
8 livestock. Apparently, the property itself is incapable of
9 producing enough forage to maintain a profitable heard of
10 livestock without supplemental forage. However, in view of
11 the historical, current and proposed grazing use of the
12 subject property, we conclude the county's findings are
13 inadequate to demonstrate the subject property is generally
14 unsuitable for production of livestock. See Clark v.
15 Jackson County, 17 Or LUBA 594, 606 (1989).

16 This subassignment of error is sustained.

17 **E. Goal 11 and 14 Plan Policies**

18 Petitioner contends the county failed to demonstrate
19 compliance with comprehensive plan, CCZO and CCLDO
20 provisions adopted by the county to implement Statewide
21 Planning Goals 11 (Public Facilities and Services) and 14
22 (Urbanization).

23 **1. CCZO 3.030(4)(C)**

24 The challenged decision identifies the following
25 findings addressing CCZO 3.030(4)(C):

26 "[The] Crook County Sheriff's Department will be
27 impacted by this development. Additional on-site
28 security should be provided by the developer. The

1 domestic water supply installed by the applicant
2 and maintained by the Owner's Association will be
3 utilized for fire protection. The Owner's
4 Association will be responsible for managing
5 garbage for the Stagecoach Ranch PUD.

6 "Because the proposed PUD may be for full-time
7 residency, it could have an impact on the area's
8 school system. While not a guarantee of total
9 vacation usage, the design and size of the units
10 may discourage full time occupancy.

11 "Upon consideration of the value of the future
12 agricultural use of the dryland bottom area of the
13 ranch versus the impacts to the existing road and
14 surrounding rural residential areas, the
15 Commission concludes the direct highway access
16 complies with this Section more fully than
17 directing the traffic to Stillman Road. Highway
18 126 is an arterial and is designed to accommodate
19 increased traffic. A left turn lane may be
20 required for safety design considerations.

21 "The proposed project would not have any impacts
22 on irrigation distribution systems. At present,
23 the site has no irrigation water rights. If, in
24 the future, such rights were to be obtained in
25 order to irrigate the northern pasture, the water
26 would be pumped to the site in underground pipes."
27 Supplemental Record 10-11.

28 CCZO 3.030(4)(C) simply requires that the county
29 consider "[i]mmediate and future impacts on public services,
30 existing road systems and traffic demands and irrigation
31 distribution systems." The cited findings consider such
32 impacts and, therefore, are adequate to comply with
33 CCZO 3.030(4)(C).

34 This subassignment of error is denied.

1 **2. CCLDO 6.040(2)**

2 Unlike CCZO 3.030(4)(C), CCLDO 6.040(2) does more than
3 simply require consideration of public facilities and
4 services. It requires that the county demonstrate PUDs have
5 "no greater demand on public facilities and services than
6 other authorized uses for the land." The findings cited in
7 the challenged decision do not demonstrate the proposed
8 Stage Coach Ranch PUD will comply with this requirement.¹⁴

¹⁴The challenged decision identifies findings 10, 11, 12, 13, 14, 15, 16, 21 and 22, appearing at Supplemental Record 4-8. Findings 10, 11, 13, 21 and 22 have been quoted previously in our discussion of the prior assignments of error. Findings 12, 14 and 15 are as follows:

"12. No fire protection is presently available, but the area may become part of the Prinevillle Fire District in the future. It has been proposed that fire protection be provided by the subdivision owners' association in the interim.

"* * * The proposed road system consists of loops with no cul-de-sacs or tight turning radii and appears suitable for fire access. * * * The Fire Marshal recommends that fire-resistant artificial roofing be employed. He also recommends a minimum well water supply of 70 gallons per minute (g.p.m.), with 80-100 g.p.m. being preferred. A cistern or reservoir could be installed to provide water for fire protection. A premise [sic] identification system will be required to facilitate fire protection.

"* * * * *

"14. Water is to be provided by a community water system supplied by one or more wells and/or springs on the property. The applicant states that the developer of the adjacent Red Cloud Ranch subdivision has constructed an 800 feet deep well which produces 550 g.p.m. of good quality water. The applicant anticipates similar results for wells on the subject property. * * *

"15. The applicant anticipates using individual septic tanks. Should this not prove feasible, a community sewage system may be developed." Supplemental Record 5-6.

1 The findings simply discuss the public facilities that will
2 be required and how they will be provided; they do not
3 demonstrate that the PUD will have "no greater demand on
4 public facilities and services than other authorized uses
5 for the land." The findings neither directly address the
6 "no greater demand" question nor provide a sufficient
7 factual basis for addressing the question. The factual
8 basis they do provide suggests the criterion is not
9 satisfied.¹⁵

10 This subassignment of error is sustained.

The challenged decision also identifies findings 14 and 15, appearing at Record 62. Those findings are as follows:

"(14) The applicant intends to contract with Avion Water Company to provide water to the proposed PUD from existing wells in the Red Cloud Ranch subdivision. Avion have [sic] indicated that they [sic] are prepared to provide the necessary service.

"(15) A sewage study has been conducted * * * for the proposed PUD. The applicant anticipates using individual septic tanks, but a community sewage system may be employed if this is not feasible.

** * * * " Record 62.

¹⁵For example finding 15 at Record 62 explains that while the applicant proposes to use individual septic tanks for the PUD, a community sewerage system will be employed if necessary. A potential demand for a community sewerage system would appear to constitute a "greater demand on public facilities and services than other authorized uses for the [EFU-3 zoned] land," in contravention of CCLDO 6.040(2). In addition, the fire protection measures required do not appear to be limited to those that would be required for other uses allowed in the EFU-3 zone.

1 **3. Public Facilities and Services Policies 2 and**
2 **7**

3 The Crook County Comprehensive Plan includes the
4 following Public Facilities and Services Policies:

5 "2. Public facilities and services for rural
6 areas shall be provided at levels appropriate
7 for rural use only and should not support
8 urban uses."

9 "7. Public facilities and services shall not be
10 allowed beyond a level that development
11 supported by such services exceeds the
12 carrying capacity of the air, land and water
13 resources; therefore, public facilities and
14 services shall be the principal framework for
15 gaging [sic] density levels and types of
16 urban and rural land developments."

17 The plan policies quoted above appear to be the county's
18 acknowledged comprehensive plan mechanism implementing the
19 requirements of Goals 11 and 14 that land uses and public
20 facilities on rural land be limited to rural levels. See
21 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447,
22 477, 724 P2d 268 (1986); Parmenter v. Wallowa County, 21 Or
23 LUBA 490 (1991); Hammack & Associates, Inc. v. Washington
24 County, 16 Or LUBA 75, 79-82, aff'd 89 Or App 40 (1987).

25 The findings cited by the county do not directly
26 address the question of whether the level of public
27 facilities required to serve the proposed PUD satisfy the
28 requirement of policy 2, quoted supra, that such public
29 facilities be provided "at levels appropriate for rural use
30 only and should not support urban uses." Neither do the
31 cited findings explain how the public facilities proposed

1 satisfy the policy 7 requirement that "public facilities and
2 services shall be the principal framework for gaging [sic]
3 density levels and types of urban and rural land
4 developments."

5 Petitioner also urges that we determine a 120 unit PUD
6 is "urban" as a matter of law and, therefore, that the
7 proposed facilities violate plan policies 2 and 7 as a
8 matter of law. The proposed PUD will have 120 lots of
9 approximately one acre each. Those dwellings will be served
10 by a community water system and may be served by a community
11 sewerage system if the proposed septic systems prove
12 inadequate. While we tend to agree with petitioner that
13 such a development is urban in nature, there is enough doubt
14 in our mind that we stop short of concluding such a
15 development is necessarily urban as a matter of law. But
16 see Kaye/DLCD v. Marion County, 23 Or LUBA 452, 463-64, 467-
17 68 (1992) (approval of PUD with community septic and water
18 system and 85 units on 72.5 acres allows an urban level of
19 use and public facilities). However, on remand the county
20 should not underestimate the difficulty of the burden that
21 must be carried to demonstrate that the Stage Coach Ranch
22 PUD, as proposed, may be approved consistently with the
23 above quoted CCZO and plan policies. The findings
24 supporting the challenged decision are clearly inadequate to
25 do so.

26 This subassignment of error is sustained, in part.

1 The second and third assignments of error are
2 sustained, in part.

3 The county's decision is remanded.