

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 1000 FRIENDS OF OREGON, and SID)

5 FRIEDMAN,)

6)

7 Petitioners,)

8)

9 vs.)

10)

11 YAMHILL COUNTY,)

) LUBA Nos. 93-214 and 93-215

12)

13 Respondent,)

14)

15 and)

16)

17 BRIAN A. PURRONE,)

18)

19 Intervenor-Respondent.)

)
FINAL OPINION
AND ORDER

20 _____)

21)

22 DEPARTMENT OF LAND CONSERVATION)

23 AND DEVELOPMENT,)

24)

25 Petitioner,)

26)

27 vs.)

28)

29 YAMHILL COUNTY,)

) LUBA No. 93-216

30)

31 Respondent,)

32)

33 and)

34)

35 BRIAN A. PURRONE,)

36)

37 Intervenor-Respondent.)

38)

39)

40 Appeal from Yamhill County.

41
42 F. Blair Batson and Charles Swindells, Portland, filed
43 a petition for review. Charles Swindells argued on behalf
44 of petitioners 1000 Friends of Oregon and Sid Friedman.
45

1 Celeste J. Doyle, Assistant Attorney General, Salem,
2 filed a petition for review and argued on behalf of
3 petitioner Department of Land Conservation and Development.
4 With her on the brief were Theodore R. Kulongoski, Attorney
5 General; Thomas A. Balmer, Deputy Attorney General; and
6 Virginia L. Linder, Solicitor General.

7
8 John C. Pinkstaff, Assistant County Counsel,
9 McMinnville, filed the response brief and argued on behalf
10 of respondent.

11
12 Brian A. Purrone, Sheridan, represented himself.

13
14 HOLSTUN, Referee; KELLINGTON, Chief Referee; SHERTON,
15 Referee, participated in the decision.

16
17 REMANDED 07/18/94

18
19 You are entitled to judicial review of this Order.
20 Judicial review is governed by the provisions of ORS
21 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners challenge two county ordinances adopting
4 exceptions to Statewide Planning Goals 3 (Agricultural Land)
5 and 4 (Forest Lands) for 13 separate areas.¹

6 **MOTION TO INTERVENE**

7 Brian A. Purrone moves to intervene on the side of
8 respondent in this appeal. There is no opposition to the
9 motion, and it is allowed.

10 **FACTS**

11 Prior to adoption of the disputed ordinances, the 13
12 areas were designated "Agriculture/Forestry Large Holding,"
13 a plan designation acknowledged by the Land Conservation and
14 Development Commission (LCDC) as complying with Goals 3 and
15 4. The parcels within those 13 areas were zoned EF-40, an
16 exclusive farm use zone acknowledged as complying with Goal
17 3, or AF-20, a mixed farm and forest zone acknowledged as
18 complying with Goals 3 and 4. Under these plan and zoning
19 designations, minimum lot sizes are 20 or 40 acres, and
20 residential development of any existing or newly created
21 parcels must satisfy the standards applicable to resource or

¹Ordinance No. 561 adopts exceptions for Areas 1, 3, 9, 25, 29, 31/34 and 42. Ordinance No. 562 adopts exceptions for Areas 41, 43, 44, 54 and 64. Petitioners 1000 Friends of Oregon and Sid Friedman (hereafter 1000 Friends) challenge both ordinances. Petitioner Department of Land Conservation and Development (DLCD) challenges only Ordinance No. 562.

1 nonresource dwellings. See ORS 215.213; 215.283; 215.284;
2 OAR 660-06-027; 660-33-120 through 660-33-135.

3 The challenged ordinances adopt exceptions to Goals 3
4 and 4 and change the plan designation for the subject areas
5 to "Agriculture/Forestry Small Holding." This plan
6 designation is not acknowledged as complying with Goals 3
7 and 4. The ordinances change the zoning of the subject
8 areas to AF-10, a rural residential zoning district. As now
9 planned and zoned, the parcels within the 13 disputed areas
10 may be divided into parcels as small as 10 acres and such
11 new parcels and any legally created existing parcels may be
12 developed with a single family residence without complying
13 with statutes, LCDC administrative rules and county
14 restrictions on allowing resource or nonresource related
15 dwellings on farm or forest land.

16 Petitioners contend the exceptions adopted by the
17 county for these 13 areas are inadequate and the county,
18 therefore, may not plan and zone those areas in a manner
19 that will permit rural residential development not otherwise
20 permissible under Goals 3 and 4.

21
22 **FIRST ASSIGNMENT OF ERROR (DLCD)**

23 **FIRST ASSIGNMENT OF ERROR (1000 FRIENDS)**

24 **A. Introduction**

25 **1. General Findings**

26 The findings adopted by the county in support of the 13
27 exception areas at issue in this appeal are lengthy. Both

1 of the challenged ordinances include identical findings
2 applicable to all of the areas for which each ordinance
3 approves an exception (general findings). The general
4 findings set out the applicable criteria for "physically
5 developed" and "irrevocably committed" exceptions. See OAR
6 660-04-025 and 660-04-028. The general findings also
7 explain the county's view that the disputed exceptions may
8 be approved because the areas have been developed or
9 irrevocably committed to a point that "commercial" farm and
10 forest use is impracticable. Record 4-5, 56-57.

11 As discussed more fully below, petitioners challenge
12 the county's assumption that it need not consider whether
13 noncommercial farm and forest uses are practicable, in
14 approving physically developed or irrevocably committed
15 exceptions to Goals 3 and 4.

16 **2. Specific Findings**

17 The general findings are followed by findings for each
18 of the disputed 13 areas (specific findings). The format
19 and approach followed in the specific findings is similar
20 for each of the 13 areas.

21 The specific findings first set out certain basic facts
22 about each of the 13 areas, including the size of the area,
23 the number of separate parcels and ownerships, the land use,
24 development, ownership and zoning characteristics of the
25 area and whether developed parcels were developed before or
26 after the statewide planning goals were adopted. The

1 specific findings also describe the land use characteristics
2 of the lands surrounding each area.

3 The specific findings then address LCDC rule
4 requirements and provide an analysis for each area. The
5 specific findings addressing LCDC rule requirements and
6 providing an analysis of those requirements for Area 1 are
7 set out below:

8 "B. Administrative Rule Provisions and Analysis

9 "1. [The findings discuss the rule requirements
10 for 'physically developed' exceptions. See
11 OAR 660-04-025.]

12 "2. Existing Features

13 "Structures: Four dwellings were constructed
14 prior to adoption of the [Statewide Planning
15 Goals]. Two of these dwellings are located
16 near the southeast corner of the study area.
17 The other two dwellings are near the
18 northwest and northeast corner of the study
19 area. Three other dwellings were placed by
20 various land use approvals that made findings
21 against the goals. These three dwellings are
22 to the north, south, and center of the study
23 area but are not included in the analysis of
24 parcels that are 'physically developed.'

25 "Roads: The study area contains three roads.
26 The first is Mountain Top Road which
27 intersects near the south of the study area.
28 The other two are Brooks and Ellis Lanes
29 which both meander through the area and
30 provide local access to the existing
31 subdivision lots.

32 "Sewer, Water and Utility Facilities: Sewer
33 service is provided by individual on-site
34 septic systems. Water is supplied by
35 groundwater supplies. Phone and electrical
36 service are generally available in the area.

1 "3. Oregon Administrative Rule 660-04-028(2) and
2 (6) list the exception requirements for land
3 irrevocably committed to other uses. These
4 rules require consideration of the following
5 factors:

6 "Characteristics of the Exception Area: The
7 majority of the area contains small farm and
8 rural residential uses. The small farm uses
9 appear to consist of pasture. Some Christmas
10 trees that are found on the northern parcels
11 in the study area have been allowed to grow
12 beyond a marketable age.

13 "Characteristics of Adjacent Lands: The
14 parcels to the north are in Washington County
15 and appear to have small farms and rural
16 residences as their primary use. This is
17 similar to the land in Yamhill County. The
18 neighboring land contains farms on lots of
19 between 20 to 80 acres. These farms include
20 orchards, Christmas trees, poultry, and
21 pastureland.

22 "Relationship between Exception Area and
23 Adjacent Land: The most apparent difference
24 between the study area and adjacent land is
25 the presence of a developed roadway that
26 serves the parcels. Small parcels also exist
27 in the study area but four of these are part
28 of a contiguous ownership that totals 23.5
29 acres. Smaller lots exist in the study area
30 but substandard lots are also common
31 throughout the Chehalem Mountains area. From
32 the aerial photo and site visits the study
33 area does not appear to be significantly
34 different from the surrounding area.

35 "Existing Adjacent Uses: [Parcels in the
36 surrounding area appear to be in residential,
37 forestry and farm uses.]

38 "Existing Public Facilities and Services:
39 See Finding B.2.

40 "Parcel Size and Ownership Pattern, Study
41 Area/Adjacent Land: Existing lots in the

1 study area vary from one to 15.8 acres. The
2 only contiguous ownership is 23.5 acres. Ten
3 of the twelve parcels involved are in
4 separate ownership. Parcels immediately
5 adjacent to the study area are between 10 to
6 22 acres. Parcels in the surrounding area
7 vary from five to 80 acres with the majority
8 from 20 to 40 acres.

9 "Neighborhood and Regional Characteristics:
10 The study area is located in the Chehalem
11 Mountains. The characteristics of the
12 neighborhood are small farm, small forest and
13 rural residential uses. Although there are
14 some parcels of over 80 acres, the majority
15 of parcels with farm uses are from 20 to 40
16 acres.

17 "Natural and Man-Made Features/Impediments:
18 Four radio towers exist near the southwest
19 corner of the study area. The towers are
20 located in an area zoned PWS * * *.

21 "Physical Development: See Finding B.2.

22 "Other Relevant Factors: This study area
23 contains 12 parcels. Of these, 10 are in
24 separate ownership. OAR 660-04-028(6)(c)(B)
25 states that small parcels do not in
26 themselves constitute irrevocable commitment.
27 However, small parcels in separate ownerships
28 are more likely to be irrevocably committed
29 if the parcels are developed, clustered in a
30 large group or around a road designed to
31 serve the parcels. The latter description
32 fits the study area. Three parcels
33 identified by tax lots 2100, 2200, and 2300
34 were all created after adoption of the
35 Statewide Planning Goals. All three of these
36 parcels have dwellings constructed. These
37 parcels were considered for elimination from
38 the study area, but due to the parcels all
39 being less than the minimum lot size, their
40 existing development and proximity to
41 established roads, these parcels were
42 determined to be irrevocably committed to
43 residential use.

1 "CONCLUSIONS

2 "1. The study area has 12 parcels in 10 separate
3 ownerships.

4 "2. Seven of the parcels contain dwellings. Four
5 of these were placed prior to adoption of the
6 statewide planning goals.

7 "3. The study area contains a roadway developed
8 to serve all of the existing parcels.

9 "4. The area contains one contiguous ownership of
10 over 20 acres.

11 "* * * * *

12 "PLANNING COMMISSION ACTION

13 "[T]he Planning Commission reviewed the study
14 area and determined that because of the poor
15 soils and testimony that this was not good
16 farm ground the area should be forwarded to
17 the Board of Commissioners for exception to
18 the Statewide Planning Goals.

19 "BOARD OF COMMISSIONER'S ACTION

20 "[T]he Board of Commissioners voted
21 unanimously to approve this study area for
22 exception to the Statewide Planning Goals and
23 [to change the plan] designation to
24 Agriculture/Forestry Small Holding." Record
25 65-69.

26 **B. Failure to Identify Goals**

27 Petitioner 1000 Friends argues the county erred by
28 failing to identify whether it was taking an exception to
29 Goal 3, Goal 4 or both.

30 In both of the challenged ordinances, the county
31 "concludes that the case for an exception to Statewide
32 Planning Goal 3 (Agricultural Land) and Goal 4 (Forest

1 Lands) has been substantiated." Record 10, 62. The
2 ordinances make it clear the county has adopted exceptions
3 to both Goals 3 and 4.

4 This subassignment of error is denied.

5 **C. Failure to Specify Type of Exception**

6 All parties recognize the focus required under the
7 applicable rules for physically developed and irrevocably
8 committed exceptions is different. The focus for physically
9 developed exceptions is on the parcel or area that is the
10 subject of the exception, whereas the focus of an
11 irrevocably committed exception is generally, but not
12 exclusively, on uses on adjacent lands. See Denison v.
13 Douglas County, 101 Or App 131, 789 P2d 1388 (1990). While
14 the focus and relevant factors differ, irrevocably committed
15 exceptions may include physically developed lands (OAR 660-
16 04-028(5)) and physical development within the exception
17 area is one of the relevant factors for approving an
18 irrevocably committed exception. OAR 660-04-028(6)(f).

19 Petitioners argue the county's findings fail to specify
20 whether the disputed exceptions are "physically developed"
21 exceptions, governed by OAR 660-04-025, or irrevocably
22 committed exceptions, governed by OAR 660-04-028.

23 We believe the specific findings make it sufficiently
24 clear that the challenged exceptions are based on both
25 physical development and irrevocable commitment. As
26 indicated earlier, the specific findings for each area

1 follow the same format. The specific findings for each area
2 include a section B(1) setting out the rule requirements for
3 physically developed exceptions. That section is followed
4 by a section B(2), entitled "Existing Features," which for
5 each area identifies dwellings constructed prior to adoption
6 of the statewide planning goals and existing roads in the
7 area. We understand sections B(1) and B(2) of the findings
8 as identifying certain portions of the exception area that
9 the county believes are "physically developed."²

10 The specific findings for each area also include a
11 section B(3) where the county sets out the factors to be
12 considered for an irrevocably committed exception and
13 findings addressing each of those factors.

14 We conclude the county's findings adequately state that
15 irrevocably committed exceptions are approved for the
16 disputed areas and that those irrevocably committed
17 exception areas include some lands that qualify for
18 physically developed exceptions.

19 **C. Commercial Farm Use and Commercial Forest Use**

20 ORS 197.732(1) provides "[a] local government may adopt
21 an exception to a goal when:

22 "(a) The land subject to the exception is
23 physically developed to the extent that it is

²We address the adequacy of the county's findings to demonstrate compliance with the criteria for a physically developed exception below. The only issue presented in this subassignment of error is whether the county adequately identified the "types" of exceptions it approved.

1 no longer available for uses allowed by the
2 applicable goal; [or]

3 "(b) The land subject to the exception is
4 irrevocably committed as described by
5 commission rule to uses not allowed by the
6 applicable goal because existing adjacent
7 uses and other relevant factors make uses
8 allowed by the applicable goals
9 impracticable[.]"

10 The county's general findings explain that the detailed
11 analysis contained in the specific findings is based on a
12 study conducted by the county. The purpose of that study
13 was to identify areas of the county that are impacted by
14 various factors, so that "commercial" farm or forest use of
15 those areas is impracticable. The challenged decision does
16 not explain exactly what the county means by "commercial"
17 farm or forest use. In its brief, respondent argues the
18 county's definition of commercial farm use "is the same as
19 used in Goal 3 and is consistent with the Goal 3 Rules."
20 Respondent's Brief 14. OAR 660-33-020(2)(a) defines
21 "commercial agricultural enterprise" as consisting of "farm
22 operations that will:

23 "(A) Contribute in a substantial way to the area's
24 existing agricultural economy; and

25 "(B) Help maintain agricultural processors and
26 established farm markets."

27 Respondent also cites Oregonians in Action v. LCDC, 121
28 Or App 497, 503, 854 P2d 1010, rev den 318 Or 170 (1993),
29 where the court upheld a LCDC periodic review order
30 rejecting the county's determination that farms with annual

1 gross receipts of at least \$10,000 constitute commercial
2 farms and establishing annual gross receipts of \$40,000 as
3 required to constitute a "commercial agricultural
4 enterprise," as that term is defined at OAR 660-05-005(2).³

5 Respondent is correct that the preservation of
6 commercial agricultural and forest enterprise is a major
7 objective expressed in Goals 3 and 4. That objective is
8 implemented under those goals and their implementing rules,
9 in part, by requiring that new parcels be of sufficient size
10 to continue "commercial" agricultural and forest
11 enterprises.⁴ However, the clear bias under Goals 3 and 4
12 in favor of commercial agricultural and forest enterprises
13 does not mean the county may assume that noncommercial farm
14 and forest uses are not "uses allowed by the applicable
15 goal" for which a proposed exception area's suitability must
16 be considered in granting an exception. DLCD v. Klamath
17 County, 16 Or LUBA 23, 28 (1987); DLCD v. Columbia County,
18 15 Or LUBA 302, 304-05 (1987); 1000 Friends of Oregon v.
19 Douglas County, 4 Or LUBA 24, 31-32 (1981).

20 ORS 215.203(2) defines "farm use" as "the current
21 employment of land for the primary purpose of obtaining a
22 profit in money by [engaging in certain listed agricultural

³OAR Chapter 660, Division 5 was repealed August 7, 1993. LCDC's current Goal 3 rule appears at OAR Chapter 660, Division 33.

⁴OAR 660-33-100 establishes minimum parcel size requirements for EFU zoned lands. OAR 660-06-026 establishes minimum parcel sizes for forest lands.

1 activities]." It may be, as respondent argues, that the
2 county has some latitude to set a threshold level of
3 profitability for determining when property is properly
4 viewed as capable of farm use, within the meaning of ORS
5 215.203. See 1000 Friends of Oregon v. Benton County, 32 Or
6 App 413, 428-29, 573 P2d 651 (1978); 1000 Friends of Oregon
7 v. Douglas County, supra 4 Or LUBA at 32.⁵ However, we
8 reject the county's suggestion that it may establish the
9 level of profitability necessary to qualify as a "farm use,"
10 as that term is defined by ORS 215.203, at same level that
11 would qualify a farm use as a commercial agricultural
12 enterprise. The goals protect and allow farm and forest
13 uses other than commercial agricultural and forest
14 enterprises. DLCD v. Klamath County, supra; DLCD v.
15 Columbia County, supra; 1000 Friends of Oregon v. Douglas
16 County, supra.

17 The county here took an improperly narrow view of "uses
18 allowed by the applicable goals," and for that reason the
19 challenged exceptions must be remanded. On remand, the
20 county must include consideration of noncommercial farm and
21 forest uses allowed under Goals 3 and 4 in considering the
22 challenged exceptions.

⁵The county's latitude to legislate on the meaning of the term "farm use" in a land use regulatory context likely would not carry over to the property taxation context. See Springer v. LCDC, 111 Or App 262, 268-69, 826 P2d 54 (1992); Newcomer v. Clackamas County, 92 Or App 174, 181, 758 P2d 369, on reconsideration 94 Or App 33 (1988)

1 This subassignment of error is sustained.⁶

2 **D. Inadequate Explanation**

3 Finally, petitioners contend the findings adopted by
4 the county are inadequate to provide the required
5 explanation for why the relevant facts found by the county
6 led it to conclude the adopted exceptions are justified.
7 Makepeace v. Josephine County, 25 Or LUBA 370, 373-74
8 (1993); DLCD v. Josephine County, 18 Or LUBA 88, 92 (1989);
9 DLCD v. Douglas County, 17 Or LUBA 466, 471 (1989).

10 The challenged decisions must be remanded in any event,
11 because the county improperly limited its consideration of
12 uses allowed under the goals to commercial farm and forest
13 uses. Therefore, we do not address petitioners' arguments
14 under this subassignment of error in detail.

15 Petitioners are correct that the county may not simply
16 identify houses constructed before the statewide planning

⁶At oral argument, petitioners suggested that all the uses allowable in EFU zones under ORS 215.213(1) and (2) and 215.283(1) and (2), including the listed nonfarm uses, are "uses allowed by the applicable goals" which must be addressed in the county's findings adopting an exception to Goal 3. However, the question of whether the county must consider nonfarm uses allowable under ORS chapter 215 and OAR Chapter 660, Division 33 in granting an exception to Goal 3 is not raised in the petition for review. Therefore, we do not reach that question. We note that even if the county were potentially required to consider suitability for such uses, OAR 660-04-028(3) provides that in adopting an irrevocably committed exception "[i]t shall not be required that local governments demonstrate that every use allowed by the applicable goal is 'impossible'." We understand OAR 660-04-028(3) to provide that findings adopted in support of an irrevocably committed exception need not necessarily specifically address each and every use potentially allowable under the Goal, at least where no specific issue is raised concerning suitability for particular uses allowed by the goal. More general findings may suffice.

1 goals were adopted and existing roads and assume the entire
2 parcels affected by such development are physically
3 developed so that they are no longer available for uses
4 allowed under the goals. See Ludwick v. Yamhill County, 11
5 Or LUBA 281, 291 (1984), aff'd 72 Or App 224, rev den 299 Or
6 443 (1985). Such improvements may justify a physically
7 developed exception for part or all of the parcel they
8 occupy. However, the county may not assume such residences
9 and roads automatically justify a physically developed
10 exception for entire parcels or ownerships.

11 The county's findings concerning the irrevocably
12 committed exception factors are more lengthy and come closer
13 to the mark, but suffer from essentially the same defect as
14 the findings on physical development. As we recently
15 explained in 1000 Friends of Oregon v. Columbia County, ___
16 Or LUBA ___ (LUBA No. 94-037, July 7, 1994), slip op 3-4,
17 even where the findings adopted in support of an irrevocably
18 committed exception address all required factors and are
19 supported by substantial evidence, "it is still this Board's
20 responsibility to determine whether the findings demonstrate
21 compliance with * * * ORS 197.732(1)(b)."

22 Respondent points out OAR 660-04-000(3) provides, in
23 part, that "[t]he intent of the exception process is to
24 permit necessary flexibility in the application of Statewide
25 Planning Goals." However, the ultimate legal standard for
26 an irrevocably committed exception in ORS 197.732(1)(b),

1 Goal 2, Part II(b), and OAR 660-04-028(1) is that "uses
2 allowed by the applicable goal are impracticable." The
3 impracticability standard is a demanding one. For this
4 Board to conclude the county correctly determined the
5 disputed areas are irrevocably committed to uses not allowed
6 by Goals 3 and 4, the county must adopt findings explaining
7 why its ultimate legal conclusion of impracticability
8 follows from the findings of fact. The specific findings
9 for Area 1, described and quoted in part supra, as well as
10 the findings for the remaining areas, fail to explain why
11 the disputed areas are irrevocably committed to uses not
12 allowed by Goals 3 and 4. The specific findings for Area 1
13 identify the existence of dwellings, roads and communication
14 structures, provide information on parcelization and
15 ownerships and identify farm and forest uses occurring both
16 within and next to the exception area. There are no
17 findings explaining why the factual documentation provided
18 supports the ultimate legal conclusion of irrevocable
19 commitment, and it is not obvious to us that it does. A
20 conclusion that farm and forest uses allowable under Goals 3
21 and 4 are impracticable does not necessarily follow from the
22 facts recited in the findings. The findings for the other
23 areas also fail to provide that explanation at all or do not
24 adequately do so.

25 This subassignment of error is sustained.

1 Petitioners' first assignments of error are sustained,
2 in part.

3
4 **SECOND AND THIRD ASSIGNMENTS OF ERROR (1000 FRIENDS)**

5 Petitioners argue the county's decision violates Goals
6 11 (Public Facilities and Services) and 14 (Urbanization) by
7 allowing potentially urban levels of residential development
8 on rural lands. See 1000 Friends of Oregon v. Curry County,
9 301 Or 447, 504-11, 724 P2d 268 (1986); Caine v. Tillamook
10 County, 22 Or LUBA 687 (1992) ; Parmenter v. Wallowa County,
11 21 Or LUBA 490 (1991); DLCD v. Klamath County, 19 Or LUBA
12 459 (1990); DLCD v. Curry County, 19 Or LUBA 249 (1990);
13 Hammack & Associates, Inc. v. Washington County, 16 Or LUBA
14 75, 82, 84-85, aff'd 89 Or App 40 (1987).

15 Respondent first argues petitioners waived this issue
16 by failing to raise it below. ORS 197.763(1); 197.835(2).
17 The statutory "raise it or waive it" requirements apply only
18 to quasi-judicial land use proceedings. We seriously doubt
19 the ordinances challenged in this appeal are correctly
20 viewed as quasi-judicial land use decisions. However, even
21 if they are, we agree with petitioners that petitioner
22 Friedman adequately raised the issue below.

23 Respondent acknowledges an exception may be required to
24 allow urban levels of development outside urban growth
25 boundaries (UGBs). However, respondent contends that under
26 OAR 660-04-010(2) exceptions are "generally not applicable"
27 to Goal 11. Moreover, respondent contends that because the

1 zoning applied to the subject exception areas imposes a
2 minimum lot size of 10 acres and the challenged decision
3 does not purport to allow urban levels of public facilities,
4 exceptions to Goals 11 and 14 are not required.

5 We are inclined to agree with respondent that the 10
6 acre minimum lot size imposed by the zoning applied to the
7 disputed exception areas is sufficient to make the
8 residential development potentially allowable in the
9 disputed exception areas "rural" rather than "urban." See
10 1000 Friends of Oregon v. LCDC (Curry County), supra, 301 Or
11 at 504-06 (one house per ten acres assumed to be rural).
12 Similarly, we fail to see how the individual water and sewer
13 systems that would be required for such development could
14 require an exception to Goal 11. However, as petitioners
15 point out, under the AF-10 zoning applied to the disputed
16 exception areas, residential development on existing
17 substandard lots much smaller than 10 acres would be
18 possible. Several of the disputed exception areas include a
19 number of smaller existing undeveloped lots or parcels.

20 We are unable to determine with certainty whether
21 development under the AF-10 zoning applied to the challenged
22 exception areas could, for particular exception areas, allow
23 residential development at a density that would violate
24 Goals 11 and 14. Because these ordinances must be remanded
25 in any event, we conclude the county should address this
26 issue in the first instance.

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

3 **FOURTH ASSIGNMENT OF ERROR (1000 FRIENDS)**

4 Petitioners contend the local government record
5 includes evidence of the presence of resources protected by
6 Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural
7 Resources) in two of the disputed exception areas.
8 Petitioners contend the county should have either applied
9 Goal 5 to protect those resources or adopted an exception to
10 Goal 5.

11 The county responds that under OAR 660-04-010(2)
12 exceptions to Goal 5 are generally not required, because
13 that goal contains its own procedures for resolving
14 conflicts between conflicting uses.

15 Both petitioners and respondent miss the relevant
16 question. If any of the subject exception areas encompass
17 lands included on the county's inventory of Goal 5
18 resources, the county must address Goal 5 in amending its
19 acknowledged plan and zoning designations for those
20 exception areas. See Urquhart v. Lane Council of
21 Governments, 80 Or App 176, 721 P2d 870 (1986); Waugh v.
22 Coos County, 26 Or LUBA 300, 310-12 (1993). On the other
23 hand, if none of the exceptions areas include land on the
24 county's acknowledged inventory of Goal 5 resources, Goal 5
25 need not be applied, and the county need not adopt an
26 exception to Goal 5. Id. The challenged decision does not

1 disclose whether inventoried Goal 5 resources are within the
2 exception areas. On remand the county must determine
3 whether any of the exception areas encompass lands included
4 on its acknowledged Goal 5 inventory, and take appropriate
5 action once that determination is made.

6 The fourth assignment of error is sustained.

7 **FIFTH ASSIGNMENT OF ERROR (1000 FRIENDS)**

8 In their final assignment of error, petitioners contend
9 the challenged ordinances violate LCDC's urban reserve rule,
10 which prohibits comprehensive plan and land use regulation
11 amendments that increase residential density beyond that
12 allowed prior to April 1992, within two miles of certain
13 UGBs. OAR 660-21-100(1); 660-21-080(3). Petitioners
14 contend Area 31/34 is within two miles of the Newberg UGB.

15 Respondent cites testimony in the record suggesting
16 Area 31/34 is not within two miles of the Newberg UGB.
17 Respondent may be correct, but neither the findings nor the
18 evidence in the record allow us to resolve this issue.
19 Because the challenged ordinances must be remanded in any
20 event, the county should make the required determination on
21 remand.

22 The fifth assignment of error is sustained.

23 The county's decisions are remanded.