BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JEAN PEKAREK,	)	
	)	
Petitioner,	)	
	)	LUBA No. 98-094
vs.	)	
	)	FINAL OPINION
WALLOWA COUNTY,	)	AND ORDER
	)	
Respondent.	)	

Appeal from Wallowa County.

Jean Pekarek, Enterprise, filed the petition for review and argued on her own behalf.

Daniel Ousley, County Counsel, Enterprise, filed the response brief and argued on behalf of respondent.

HOLSTUN, Board Chair; BASSHAM, Board Member, BRIGGS, Board Member participated in the decision.

REMANDED 07/30/99

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

Petitioner challenges the county's approval of a zone change from exclusive farm use (EFU) to rural residential (R-1) and a plan amendment to include an exception to the Statewide Planning Goals for the subject property.

FACTS

The subject property[1] is a 40-acre portion of a 721-acre parcel zoned EFU. The 721-acre parcel is situated southwest of the City of Joseph and west of Wallowa Lake.[2] The 721 acres are part of a commercial ranching operation owned by the Buhler Ranch Partnership. The subject 40 acres occupy the northeast corner of the 721 acres and are currently used for grazing.

The subject property is separated from the remaining portion of the EFU-zoned 721 acres by two roads—Lakeshore Drive on the south and Ski Run Road on the west. The adjoining parcels to the east are zoned recreation residential (R-2). The adjoining parcels to the north are zoned R-1. The subject property is located on the terminal portion of the west moraine of Wallowa Lake and is designated in the Wallowa County Comprehensive Land Use Plan (WCCLUP) as part of the scenic resource, geologic/natural area, and wildlife habitat protected area pursuant to Statewide Planning Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources).

In November 1997, the Buhler Ranch Partnership (applicant) applied for a zone change for the subject property from EFU to R-1. The proposed zone change requires a

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[1]OAR 660-004-0028(1)(b) defines "exception area" as "that area of land for which a 'committed exception' is taken." In its findings, the county refers to the area adjacent to the area of land for which the committed exception is taken in this case as the "exception area." We refer to the area of land that is the subject of this land use decision as the "subject property" throughout this opinion to distinguish that area of land from the county's use of "exception area."

[2]For a general description of the Wallowa Lake area and the moraines, see Buhler Ranch v. Wallowa County, 33 Or LUBA 594, 596 (1997).

major amendment to the county comprehensive plan map and zoning map as well as an exception to county and Statewide Planning Goals. The county court approved the application on May 18, 1998. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the county "misconstrued applicable law by not applying Goal 5 to the zone change." Petition for Review 3. The county responds that the first assignment of error should be denied because the challenged decision cites Goal 5 as an applicable criterion and includes a finding that addresses Goal 5. Because petitioner also quoted the challenged decision's only finding that addresses Goal 5, we do not read the argument under this assignment of error as literally as the county does. Essentially, petitioner argues that the county's Goal 5 analysis is so inadequate as to constitute a failure to apply Goal 5.

Goal 5 requires that the county "conserve open space and protect natural and scenic resources." OAR chapter 660, division 23, the Goal 5 administrative rule, provides procedures and criteria whereby local governments are required to (1) inventory the location, quality, and quantity of Goal 5 resources within its territory (OAR 660-023-0030); (2) identify conflicting uses for significant Goal 5 resources (OAR 660-023-0040(2)); (3) conduct an analysis of the economic, social, environmental, and energy (ESEE) consequences of negative impacts between conflicting uses and significant Goal 5 resources (OAR 660-023-0040(4)); and (4) develop programs to achieve the goal of significant resource protection (OAR 660-023-0040(5) and 660-023-0050).[3]

Where a plan or zoning ordinance amendment affects inventoried Goal 5 resources, the local government must apply the requirements of the Goal 5 rule and determine that the rule is satisfied. Friends of Cedar Mill v. Washington County, 28 Or LUBA 477, 487 (1995) (applying OAR chapter 660, division 16). Consequently, to the extent the proposed

[3]The Land Conservation and Development Commission's first Goal 5 rule is codified at OAR chapter 660, division 16. That rule has been replaced in large part by OAR chapter 660, division 23. OAR 660-023-0250.

amendments affect significant Goal 5 resources, the local government must conduct the Goal 5 analysis required by OAR chapter 660, division 23. See Palmer v. Lane County, 29 Or LUBA 436, 438-47 (1995) (reviewing adequacy of local government's Goal 5 analysis pursuant to OAR chapter 660, division 16); Gage v. City of Portland, 28 Or LUBA 307, 314 (1994), aff'd 133 Or App 346, 891 P2d 1331 (1995) (stating Goal 5 rule requirement).

Petitioner argues that although the subject property is entirely within inventoried Goal 5 resource areas, the county did not review the zone change for conformance with Goal 5. Because the subject property is included on the county's inventory of Goal 5 resources, petitioner argues that under 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA 508, 522 (1994), the county must address Goal 5 in amending its acknowledged plan and zoning designations for the subject property. Petitioner also argues that because the county was required to take a goal exception to rezone the property from EFU to R-1, OAR 660-004-0010(3) and 660-023-0250(2) require that the county apply Goal 5.[4] Finally, petitioner argues that under the county's Land Development Ordinance (WCLDO), major plan amendments must be in conformance with all elements of the county comprehensive plan and plan maps which, as indicated above, designated the subject property as a Goal 5 resource. WCLDO 8.025(1)(B), 8.010.[5] Therefore, petitioner argues, applicable case law,

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[4]OAR 660-004-0010(3) provides:

> "An exception to one goal or goal requirement does not assure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken."

OAR 660-023-0250(2) provides that OAR chapter 660, division 23 is applicable to post-acknowledgement plan amendments initiated after September 1, 1996.

[5]The review criteria for plan amendment requests at WCLDO 8.025(1)(B) provide:

> "(1) Major amendments shall meet the following:
>
> "* * * * *

administrative rules, and county ordinances require that the county apply Goal 5 to the zone change application.

Finding 13 of the challenged decision states:

> "The scenic, natural, and open space resources in the area are adequately protected from uses that conflict with such resources by protective provisions of the Wallowa County Comprehensive Plan and the Wallowa County Land Development Ordinance, which provisions are applicable to the area subject to this application. Therefore, to the extent the requirements of Statewide Planning Goal 5 must be addressed, those requirements are satisfied." Record 39.

Finding 13 is the sole finding that purports to address Goal 5. While the decision acknowledges the existence of Goal 5 resources on the subject property, its finding that the requirements of Goal 5 are satisfied does not address those requirements, but relies solely on the county's existing Goal 5 program to address any conflicts to the extent that the Goal 5 program applies. However, the finding does not state which of the county's existing Goal 5 program provisions ensure continued compliance with Goal 5 once the committed exception is taken. More importantly, the challenged decision does not appear to consider whether changing the subject property's zoning from EFU to R-1 may introduce the possibility of new conflicting uses. Welch v. City of Portland, 28 Or LUBA 439, 444 (1994). To the extent that the findings can be read to conclude that the proposed R-1 zoning will not introduce the possibility of new conflicts that are not present under the current EFU zoning, that conclusion is not explained and for that reason the finding of compliance with Goal 5 is

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> "(B) The proposed amendment is in conformance with all other elements of the land use plan and land use plan map."

WCLDO 8.010 provides in part:

> "Revisions to the land use plan, to the text of this ordinance, to the land use plan map, and to the zoning map affecting areas more than ten acres in size will be regarded as major amendments to be processed as a legislative action."

inadequate. Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 20-21, 569 P2d 1063 (1977).

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the county "erred in concluding the plan amendment is in conformance with all elements of the comprehensive land use plan and plans maps, and violated Goal 5 by approving the zone change." Petition for Review 6. Petitioner and the county agree that the application is subject to WCLDO 8.025(1)(B), and that under that provision the challenged legislative action must be in compliance with the county's comprehensive plan text and map. Petitioner contends that, despite the county's finding of compliance with the comprehensive plan, the amendment to rezone the subject property does not conform to the Goal 5 policy provided in the comprehensive plan.[6] The policy petitioner cites provides that all of the Wallowa Lake moraines "will be preserved as scientific natural areas" of significance to the county, state and nation. WCCLUP Goal 5, policy 5.

Petitioner explains that the county's Goal 5 program for the Wallowa Lake moraines adopts a 3A and two 3C programs for different portions of the moraines.[7] The Goal 5 inventory divides the moraines that slope down to and away from the lake into two parts for purposes of applying the county's Goal 5 protection program—the part facing the lake and the part facing away from the lake. The lake-facing side of the eastern moraine is considered the most sensitive and is protected by a 3A program. No conflicting uses are allowed in that area. The lake-facing side of the western moraine is protected by a 3C program that allows development only under the strictest conditions. Other areas, including the portion of the

[6]Finding 7 states in part that "[t]he proposed amendment is in conformance with all other elements of the land use plan and map" and concludes that the map will be improved by the proposed amendment. Record 37.

[7]The original Goal 5 rule referred to the programmatic options identified at OAR 660-016-0010(1), (2) and (3) as 3A (Protect the Resource), 3B (Allow Conflicting Uses Fully) and 3C (Limit Conflicting Uses). Those same programmatic options are available under the new Goal 5 rule at OAR 660-023-0040(5)(a)-(c).

western moraine facing away from the lake, are protected by a 3C program with less rigid guidelines for development.[8]

The subject property apparently contains some land in the most restrictive 3C area that applies to the lake-facing side of the west moraine and some land in the less restrictive

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[8]The WCCLUP provides, in part:

> "The properties located on the east side of the East Moraine and the west side of the West Moraine are designated a less restrictive 3C status. Except as provided in Section 28.020 of the Wallowa County Land Development Ordinance, a dwelling sited at a density of less than one per 160 acres will not be acceptable in areas that do not offer a 'suitable visual buffer' (timber, topography, etc.). A higher density of dwellings which would be directly seen from the viewshed of the Wallowa Lake Moraines' Scenic Resource will serve to deteriorate this resource. In areas where an acceptable 'suitable visual buffer' and as provided for in the accompanying land use regulations, in some areas it may be possible to site dwelling on parcels of less than 160 acres if all other applicable criteria, including other Goal 5 protection standards, are met." WCCLUP Appendix 5-8.

WCLDO 28.020(9) provides:

> "In that area of the Wallowa Lake Moraines identified in the Wallowa County Comprehensive Land Use Plan as being of Goal 5 resource importance, the following standards shall apply in addition to those identified in the underlying zone. For purpose of this section, conflicting uses are considered to be anything which may alter the existing character of this area. Conflicting uses include but are not limited to: development of residential, non-residential, or commercial structures, roads, agricultural practices which are both non-traditional and intensive, and other activities which would require any facilities, structural or otherwise, to be developed.
>
> "* * * * *
>
> "(B) Within that area located on what can be considered * * * the East side of the Western Moraine which has been designated a 3C protection status, conflicting uses will be specifically limited to a minimum.
>
> "(1) Uses may be allowed subject to the requirements of Article 9, Conditional Use Permit, provided that:
>
> "* * * * *
>
> "(e) Dwellings are located at a density of no greater than one per 160 acres. The review authority may require specific location for siting the dwelling.
>
> "* * * * *
>
> "(C) Within that area located on what can be considered * * * the West side of the Western Moraine which have been designated a 3C protection status, conflicting uses will be specifically limited except as provided in (b) of this section."

3C area applied to the balance of the west moraine facing away from the lake. Record 76. Petitioner argues that the zone change from EFU with a 160-acre minimum lot size to R-1 with a 5-acre minimum is in direct conflict with WCCLUP Appendix 5-8. See n 8.

The county responds that petitioner fails to identify any plan provision that is violated by the challenged decision. The county argues that the WCCLUP Appendix 5-8 protection creates an overlay zone in which residences must, in addition to complying with the applicable zone, be sited in an area with a suitable visual buffer or have a density of 160 acres. Because those plan protections remain in place, the county reasons that the challenged decision has no affect on the application of those protections to the subject property. Therefore, as finding 13 of the challenged decision concludes, the county argues that both Statewide Planning Goal 5 and the county's Goal 5 protections set out in the plan and on the plan map were not violated by the challenged decision.

As to petitioner's specific argument that the subject property is subject to WCLDO 28.020(9)(B)(1)(e), see n 8, the county argues that the subject property is not located on the east side of the western moraine; that there is no requirement that the county's decision must comply with the provisions of WCLDO 28.020; and that a 160-acre density is not the same as a minimum lot size.

We question the county's argument that the subject property is not located on the east side of the western moraine, but rather on the terminal moraine. We also question the county's argument that almost all of the subject property lies on the west side and not the east side of the west moraine. The county comprehensive plan map appears to show the subject property as subject to both 3C protections. Record 76. The county's argument that there is no requirement that the challenged decision comply with "any of the regulations of the WCLDO" appears to be inconsistent with the decision itself, because the challenged decision specifically lists WCLDO Article 28 as a review criteria. Record 36. The county appears to be correct on its last point -- a 160-acre density requirement is not necessarily the same as a

minimum lot size requirement -- but that does not necessarily mean that R-1 zoning is consistent with a 160-acre density requirement.

We have already concluded under the first assignment of error that the county's findings addressing Goal 5 are inadequate. Similarly, the county's findings are inadequate to demonstrate compliance with WCCLUP App 5-8 and WCLDO 28.020. It is not possible from the challenged decision to determine precisely what inventoried Goal 5 resource areas are located on the property. It is not possible to identify which county Goal 5 resource protection programs affect all or parts of the subject property. Until the county has adopted these basic findings, it is in no position to adopt findings explaining whether the proposal is consistent with the county's existing Goal 5 resource protection provisions.

The second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

Petitioner contends that the county misconstrued applicable law, failed to make adequate findings, and made a decision not supported by substantial evidence when it determined that the subject property is irrevocably committed to nonresource use. Petitioner contests the conclusion that resource use of the subject acreage is impracticable based on evidence in the record about the character of the subject property, its soil capacity, the existing adjacent uses, parcel size and ownership patterns in the area, and existing public facilities and services.

The applicable law is found in Goal 2, Part II(b), ORS 197.732(1)(b), and OAR 660-004-0028(1), which all provide:

> "A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable."

OAR 660-004-0028 describes the analysis that a local government must follow in determining if land is irrevocably committed.[9]

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[9]OAR 660-04-028 provides, in relevant part:

> "(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:
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> "(a) The characteristics of the exception area;
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> "(b) The characteristics of the adjacent lands;
>
> "(c) The relationship between the exception area and the lands adjacent to it; and
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> "(d) The other relevant factors set forth in OAR 660-004-0028(6).
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> "(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource-protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is 'impossible'. For exceptions to Goal 3 * * *, local governments are required to demonstrate that only the following uses or activities are impracticable:
>
> "(a) Farm use as defined in ORS 215.203;
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> "* * * * *
>
> "(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.
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> " * * * * *
>
> "(6) Findings of fact for a committed exception shall address the following factors:
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> "(a) Existing adjacent uses;
>
> "(b) Existing public facilities and services (water and sewer lines, etc.);
>
> "(c) Parcel size and ownership patterns of the exception area and adjacent lands:
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> "(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings

ORS 197.732(6) provides that, upon review of a decision approving or denying a goal exception, this Board

> "(a) * * * shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

> against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;
>
> "(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.
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> "(d) Neighborhood and regional characteristics;
>
> "(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;
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> "(f) Physical development according to OAR 660-004-0025; and
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> "(g) Other relevant factors.
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> " * * * * * "

"(b) * * * shall determine [upon petition] whether the local government's findings and reasons demonstrate that the standards of [ORS 197.732(1)] have or have not been met; and

"(c) * * * shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards of [ORS 197.732(1)] have or have not been met."

Findings 16-23 of the challenged decision state the bases for the county's conclusion that Goal 3 uses are impracticable on the subject property:

"16: The parcel has inadequate soil to support any farming or any practicable grazing on the property. The property has no existing or future availability of water for farm irrigation purposes that is cost-effective. The soil, slopes and terrain preclude any mechanized farming methods. OAR 660-004-0028(6)(b).

"17: Adjacent zoning and use is R-1 to the north, R-2 to the east, and EFU to the south and west. Land use north of the R-1 zone is residential – the City of Joseph and its urban growth area. OAR 660-004-0028(6)(a).

"18: The existing adjacent parcels are in separate ownerships, and are developed, and are clustered around Ski Run Road and Lakeshore Drive. OAR 660-004-0028(2)(b) and (6)(a).

"19: In the case of DLCD v. Curry County, 151 Or App 7, [947 P2d 1123] (1997), unsuitability for resource use should be considered, along with existing uses on adjacent lands, as one of the factors relevant to the application.

"20: An aerial photograph with overlay transparencies showing the existing adjacent uses, existing public facilities and services, adjacent parcel sizes, development and ownership patterns (history) of the exception area and adjacent lands, together with the convincing testimony that the existing adjacent uses are primarily residential and that agricultural activities on the parcel are impracticable (because of poor soil, lack of water, and complaints by residential neighbors), establishes that the land subject to the exception is irrevocably committed to uses not allowed by Goal 3 because existing adjacent uses and other relevant factors make uses allowed under Goal 3 impracticable. OAR 660-004-0028.

"An analysis of parcel size and ownership patterns, provided in the form of a 'Lot History Index', which demonstrated how the existing development pattern came about and that about one-half of the

existing lots and improvements on adjacent lands were created prior to land use law coming into effect and the remainder were created in accordance with planning regulation and procedure. OAR 660-004-0028(6)(c).

"21: The Wallowa Lake County Service District sewer collection mainline runs thorough the exception area[10] and very close to the subject property. The domestic water source for the City of Joseph originates nearby. The City of Joseph domestic water treatment plant and water lines are located in adjacent properties. However, despite the proximity of these services, it is not realistic to assume connection would be made to these public facilities. Sewer and water must be developed on site. OAR 660-004-0028(6)(b).

"22: The subject parcel is separated from adjacent resource lands by Ski Run Road and Lakeshore Drive, both of which will carry increasing levels of traffic. These roads effectively impede practicable resource use of the exceptions areas. Stock must cross the road to obtain water and to be moved to other pastures since this parcel is too small for long-term pasturage or cost-effective irrigation. OAR 660-004-0028(6)(b), (e).

"23: Applicant/Owner's land is irrevocably committed to Rural Residential (R-1) use. OAR 660-004-0028." Record 40-41 (emphasis in original).

The county concluded that "cost-effective commercial agricultural use is impracticable" and that the subject property is irrevocably committed to non-resource use. Record 42. Petitioner attacks the county's findings on numerous grounds, asserting that the decision does not demonstrate that the subject property is irrevocably committed to uses not allowed by Goal 3. Petitioner points out that while findings 17, 18, and 20-22 describe the current zoning, parcelization and agricultural capability of the surrounding area, access, available public facilities and services, and present adjacent land uses, the findings do not explain what impact, if any, they have on the practicability of uses on the subject property.

We consider petitioner's challenges to the county's findings and then consider whether those findings taken as a whole, demonstrate irrevocable commitment. See 1000

[10]See n 1.

Friends of Oregon v. Columbia County, 27 Or LUBA 474, 476 (1994) (LUBA considers whether the local governments findings that are relevant and supported by substantial evidence are sufficient to demonstrate compliance with the standard of ORS 197.732(1)(b) that 'uses allowed by the goal [are] impracticable').

A. Soils (OAR 660-004-0028(2)(a))

The county found that the subject property is comprised of inadequate soil to support any farming or practicable grazing, that the property has no cost-effective existing or potential water available for farm irrigation, and that the soil, slopes, and terrain preclude any mechanized farming methods.

The county's findings that the soils on the subject property are unsuitable for farm use are simply unexplained conclusions and appear to be based in large part on the erroneous assumption that the current grazing use of the property is not a farm use.[11] The county also apparently relies on a table showing "Land Capability and Yields Per Acre of Crops." Record 79. However, the county's findings are inadequate to explain why that table, in and of itself, demonstrates the subject property's soils are inadequate to support any farm use.

The subject property consists predominately of Class VI soils. Record 77-78. The table identified by the county does lend some support to the county's contention that the particular soils on the subject property are of limited value for wheat or hay production or for use as pasture. However, the comprehensive plan specifically provides that Class VI soils are suitable for both pasture and range use. WCCLUP Appendix 3-1. The comprehensive plan also states that even less suitable Class VII soils "have significant importance for grazing." Id. The evidence cited by the county does not address the suitability of the subject property for "range" use at all.

[11]We explain below why that assumption is erroneous.

Because we conclude the county's findings concerning the suitability of the soil for farm use are inadequate, we need not consider petitioner's substantial evidence challenge to those findings. 1000 Friends of Oregon v. Columbia County, 27 Or LUBA at 476. However, were we required to reach petitioner's substantial evidence challenge, we seriously question whether the cited table constitutes substantial evidence that the subject property is unsuitable for pasture or range use.

B. Parcel Size and Ownership Pattern (OAR 660-004-0028(6)(c)(A))

Committed exceptions "'must be based on facts illustrating how past development has cast a mold for future uses.'" 1000 Friends of Oregon v. LCDC (Curry Co.), 301 Or 447, 501, 724 P2d 268 (1986) (quoting Halvorson, et al v. Lincoln Co., 14 Or LUBA 26, 31 (1985)). A committed exception "require[s] an analysis of how existing development on some parcels affects practicable uses of others." 301 Or at 501. OAR 660-004-0028(2) provides that whether land is irrevocably committed "depends on the relationship between the exception area and the lands adjacent to it."

Finding 20 relies, in part, on a "Lot History Index" to conclude that parcel size and ownership patterns irrevocably commit the subject property to nonresource use. Petitioner challenges the adequacy of the county's finding. Petitioner acknowledges that the "Lot History Index" contains some ownership information for the properties to the north. However, petitioner argues that the "Lot History Index" contains no information for properties to the east nor does the county make any findings that explain what it is about existing parcel size and ownership patterns that irrevocably commit the subject property to nonresource use. Furthermore, finding 20 does not specify the location of parcels created prior to application of the Goals. Neither can we tell from the county's findings whether it may have improperly considered resource and non-resource parcels that were created pursuant to the Goals. See OAR 660-004-0028(6)(c)(A) (stating requirement).

OAR 660-004-0028(6)(c)(A) requires findings of fact that address parcel size and ownership patterns of the subject property and adjacent lands to analyze "how the existing development pattern came about." We agree with petitioner that finding 20 fails to satisfy the analysis requirement contemplated by OAR 660-004-0028(6)(c)(A) and does not explain how the "Lot History Index" leads to the conclusion that the proposal satisfies the committed exception standard. DLCD v. Josephine County, 18 Or LUBA 88, 92 (1989); DLCD v. Douglas County, 17 Or LUBA 466, 471 (1989).

C. Adjacent uses (OAR 660-004-0028(6)(a))

Petitioner contends that finding 18 is not supported by substantial evidence in the record. Petitioner argues that the aerial map with the overlay maps of the subject property show that none of the directly adjacent parcels have structures. The aerial map does not show that there are structures surrounding the subject property, and the record fails to identify which of the structures to the north and east are dwellings and which are other types of structures. Record 59. The county concedes that the decision does not discuss the resource lands to the south and west in its analysis of adjacent lands.

The Court of Appeals has held that "the fundamental test for an irrevocable commitment exception * * * requires surrounding areas and their relationship to the exception area to be the basis for determining whether the exception is allowable." DLCD v. Curry County, 151 Or App at 11-12. For a committed exception, OAR 660-004-0028(2)(b) and (6)(a) require that the local government's findings address the "characteristics of the adjacent lands" and "[e]xisting adjacent uses," respectively. Finding 18 cites those rule sections and states "[t]he existing adjacent parcels are in separate ownerships, are developed, and are clustered around Ski Run Road and Lakeshore Drive."

Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding in a specific case. Dodd v. Hood River County, 317 Or 172, 179, 855 P2d 608 (1993). We agree with petitioner that the

evidence in the record is not sufficient to demonstrate that the existing adjacent parcels are developed. However, the county's findings suffer from a more fundamental defect. The findings identify adjacent uses in only a very general manner. The findings do include a general reference to more detailed evidence in the record, but make no attempt to explain what it is about the adjacent uses that make farm use of the subject property impracticable. Such findings are inadequate to explain why adjacent uses make continued resource use of the subject parcel impracticable.

D. Existing Public Facilities and Services (OAR 660-004-0028(6)(b))

Findings 20 and 21 indicate that the subject property is committed to nonresource use because of existing public facilities and services, specifically sewer and water. The county finds that the sewer line runs very close to, but not across the subject property. Record 41. Finding 21 concludes that "despite the proximity of these services, it is not realistic to assume that connection would be made to these public facilities" and that "[s]ewer and water must be developed on site." The county argues that the "existence of city water services and county service district sewer service to adjacent lands is highly relevant to whether or not those lands are irrevocably committed to nonresource uses, even if those services are not currently available into the area in question." Response Brief 15.

The important inquiry is not whether adjacent lands—in this case lands zoned for residential use—are irrevocably committed to that use, but whether the subject property is irrevocably committed to nonresource use. Further, even if the existence of water and sewer lines on adjacent properties may be relevant to whether the subject property is irrevocably committed to nonresource use, findings 20 and 21 do not explain what that relevance is.

E. Man-made Features (OAR 660-004-0028(6)(e))

Finding 22 maintains that the Ski Run Road and Lakeshore Drive impede practicable resource use of the subject property. OAR 660-004-0028(6)(e). However, the county's

findings make no attempt to explain what it is about the adjoining roads that make it impracticable to continue the current practice of grazing livestock on the subject property.[12]

F. Farm Use Under ORS 215.203(2)(a)

The parties agree that the applicant operates a commercial agricultural business on the lands it owns. The applicant produced a gross income of $247,000 in 1995 from that business. The subject property is part of approximately 960 acres in contiguous ownership. Record 125. The subject property is currently in farm deferral and fenced. Supplemental Record II 14.

Petitioner challenges the county's determination in finding 20 that farm use of the subject property is impracticable. Petitioner recognizes that the county may consider any limiting characteristics of the subject property itself in determining whether the subject property is irrevocably committed to non-resource use. DLCD v. Curry County, 151 Or App at 11. However, petitioner's argument is premised on the fact that the subject property is currently used for grazing as part of a successful commercial ranching operation. Petitioner argues that if a specific portion of a farm operation is used for agricultural use, it is unreasonable to conclude that existing adjacent uses or other factors have made farm use of the property impracticable given that it is being put to farm use.

ORS 215.203(2)(a) defines "farm use" as including:

> "[T]he current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock * * *."

The county argues that the requirement of OAR 660-004-0028(3) to find the farm uses in ORS 215.203 impracticable in this case only requires the county to show the

[12]Because the county's findings concerning any limitations existing man-made features pose for continued farm use of the subject property are inadequate, it is unnecessary for us to reach petitioner's substantial evidence challenge to finding 22. We note however, the record does not contain information on either the current or projected traffic patterns or levels on these adjoining roads. The record also does not contain evidence regarding the number of residences that are or will be served by the roads.

livestock operations "of feeding, breeding, management, and sale of livestock" are impracticable.[13] Response Brief 11. We understand the county to contend that grazing livestock, as is done on the subject property, does not fall within the statutory definition of "farm use." We disagree.

Petitioner correctly points out that ORS 215.203 defines "farm use" as including the "current employment of land" for "the produce of * * * livestock." To the extent the county argues that grazing livestock on the subject property in conjunction with the applicant's larger livestock operation does not constitute "current employment of land" for "the produce of * * * livestock," we reject the argument.

The county also argues that the subject property's status as a part of a commercial agricultural operation does not preclude the county from concluding that uses adjacent to the subject property, together with "other relevant factors" make the continued use of the subject property for uses allowed by Goal 3 impracticable. The county argues that those factors, combined with the steepness of the subject property, the nature of its soils and the manmade impediments make agricultural use of the subject property impracticable.

We agree with the county's first argument but not with the second. As we have already determined above, the county findings are inadequate to explain why any or all of the factors it identifies support its conclusion that the subject property is irrevocably committed to non-resource use.

G. Conclusion

The county concluded that "cost-effective commercial agricultural use is impracticable" and that the subject property is irrevocably committed to non-resource use.

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[13]OAR 660-004-0028(3) provides in part:

> "For exceptions to Goal 3 * * *, local governments are required to demonstrate that only the following uses or activities are impracticable:
>
> "(a) Farm use as defined in ORS 215.203[.]"

Record 42. We emphasize that "commercial" agriculture is not the test. The county must make findings that show that "farm use" is impracticable. The subject property need not be capable of supporting a commercial farm by itself to be capable of being put to "farm use," as that term is defined by ORS 215.203. 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA at 517-18. The findings viewed as a whole do not demonstrate irrevocable commitment to nonfarm use. Petitioner's overriding argument is that the county's findings fail to show that the subject property, which is currently being used as part of a larger farming operation, cannot be practicably be put to farm use. We agree that the findings—whether viewed individually or viewed as a whole—fail to explain what it is about the factors identified in the findings that render continued use of the subject property for farm use impracticable.

While the historic use of the subject property for livestock grazing in conjunction with the larger commercial operation may not be dispositive of the question, nothing in the county's findings explains why the subject property cannot, at the very least, be continued for that farm use. See DLCD v. Crook County, 26 Or LUBA 478, 493 (1994) (past use of property for grazing is a substantial obstacle to finding the property is generally unsuitable for grazing); Clark v. Jackson County, 17 Or LUBA 594, 606 (1989) (same).

This third assignment of error is sustained.

The county's decision is remanded.